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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 54, No. 236
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-206]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. Other products may include honey, molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, and condiments. The revision will adjust the fees to recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090-6456, Telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The final rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule will amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change June 5, 1986 (51 FR 20438), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3-percent pay increase effective January 1, 1987, and a 2-percent pay increase effective January 1, 1988.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In fiscal year 1989, the following increases occurred in program operating expenses: (1) A Government-wide salary increase of 4.1 percent effective January 1, 1989; (2) a 28.3 percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all Government agencies) effective January 1, 1989; (3) a 10 percent Government-wide increase in travel entitlements effective in October 1988; and (4) a projected inflationary cost increase of 3.8 percent for fiscal year 1989. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a $900,000 loss in fiscal year 1989. Therefore, it is found that good cause exists for making this final rule effective upon publication in the **Federal Register**.

A notice of proposed rulemaking was published in the **Federal Register** (54 FR 36982-36984) on September 6, 1989 with a thirty day comment period. The comment period closed on October 6, 1989. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The program will incur over a $900,000 loss in fiscal year 1989 alone; (2) this action should be made effective upon publication in the **Federal Register** so that program fees will reflect the costs of services rendered as soon as possible and; (3) interested persons were afforded a thirty day comment period and no comments were received.

Accordingly, for the reasons set forth in the preamble, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.49, 52.50, 52.51, 52.52c, 52.52d) are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090 as amended (7 USC 1622, 1624).

2. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations is this part, shall be at the rate of $31.00 per hour plus an additional $7.00 per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.49 is revised to read as follows:

§ 52.49 Charges for copies of inspection documents and/or inspection data.

If the applicant for inspection service requests additional copies of inspection documents and/or inspection data referable to the processed product covered thereby, the applicant may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.42: Provided, that no charge shall be made for one copy if requested at the time of the original request for inspection. Inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate for each seven (7), or fewer copies in accordance with the rate in § 52.42.

4. Section 52.50 is removed and §§ 52.51 and 52.52 are redesignated as §§ 52.50 and 52.51 and newly redesignated § 52.50 is revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $31.00 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

5. Newly redesignated section 52.51 is amended by republishing (c) introductory text and by revising paragraphs (c)(1), (c)(2), (c)(5), (d) introductory text (d)(1), (d)(2), and (d)(5) to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis:

Each inspector—$25.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—$28.00 per hour.
In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c)(1) and (2) of this section plus $7.00 per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule: [1]

(1) Each inspector—$28.00 per hour.[1]

(2) In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraph (d)(1) of this section plus $7.00 per hour.

* * * * *

Dated: December 6, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-28860 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1135

[DA-90-001]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of portions of the Southwestern Idaho-Eastern Oregon Federal milk order. The suspended provisions relate to limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. This action was requested by the Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid needs and handles reserve milk supplies. The continuation of the suspension is to prevent uneconomic movements of milk. The suspension begins in December 1989 and will continue for an indefinite period. The same order provisions have been suspended since December 1988.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 6, 1989; published November 13, 1989 (54 FR 47215).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 13, 1989 (54 FR 47215) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month

[1] Except a minimum of 8 hours per day will be billed for intermittent type in plant services in lieu of a minimum of 40 hours a week. Assignments in-plant for less than four weeks will be billed in accordance with § 52.42.

of December 1989 and continuing indefinitely the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5), and (6).

Statement of Consideration

This action continues the suspension of provisions that limit the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. These provisions have been suspended since December 1988 through two previous suspension actions. The Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested this indefinite suspension.

The reasons justifying this indefinite suspension relate to the persisting conditions that led to the two prior six-month suspensions of the same order provisions. These include the costs of unloading and re-loading of about 2,000,000 pounds of milk through a supply plant each month to meet diversion requirements, which results in increased exposure of the milk to contamination and in shrinkage of milk weights. In addition, continuing uncertainties regarding production trends, economic conditions, and Class I milk utilization make it difficult to establish a diversion percentage that would allow an effective allocation of the milk supply.

Western Dairymen Cooperative, Inc. (WDCI) filed comments supporting the requested indefinite suspension, maintaining that it would aid in the efficient transportation of milk, and would in no way affect producers volumes of milk.

Sales of Class I products have increased modestly in 1989. However, production is still projected to surpass Class I needs for the market. Moreover, there appears to be no basis to conclude that additional supplies of milk would be pooled in the continued absence of diversion limits. Thus, it is reasonable to conclude that a continued suspension of the diversion requirements will allow the needs of the order to be met without causing disruption to producers who have historically supplied the Southwestern Idaho-Eastern Oregon marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1135

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended indefinitely beginning with the month of December 1989.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR part 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1135.13 [Suspended in Part]

2. In § 1135.13, paragraphs (f) (3), (4), (5), and (6) are suspended.

Signed at Washington, DC, on: December 5, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–28856 Filed 12–8–89; 8:45 am]

BILLING CODE 3410–03–M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88–013F]

RIN 0583–AA90

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to preclude the distribution in the United States of imported products which have been refused entry into the United States. The rule adds a provision to the regulations that any such products exported to another country and returned to the United States would be subject to detention in accordance with section 402 of the Federal Meat Inspection Act (FMIA) or section 19 of the Poultry Products Inspection Act (PPIA) and to seizure and condemnation in accordance with section 403 of the FMIA or section 20 of the PPIA. This rule is necessary specifically to provide that such products are subject to administrative detention and judicial seizure and condemnation as authorized under the Acts.

EFFECTIVE DATE: January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Compliance Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5604.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Current regulations prevent the distribution into human food channels of those meat or poultry products offered for importation into the United States from foreign countries and subsequently refused entry. The regulations further prohibit the reimportation of such product into the United States. Although the regulations currently do not so state, FSIS has authority under the FMIA and the PPIA to take the necessary steps to preclude the distribution in the United States of any refused entry product that has been returned to the United States. This rule does not adopt new policy, but merely specifies actions currently authorized under the Acts which provide for the administrative detention and the judicial seizure and condemnation of product in commerce, which is adulterated or misbranded or

otherwise in violation of the FMIA or PPIA. As such, no new requirements are being placed on foreign or domestic markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule merely clarifies the regulations to reflect authority established under the FMIA and PPIA with respect to the administrative detention and judicial seizure and condemnation of meat or poultry products that are adulterated or misbranded or otherwise in violation of the FMIA or PPIA.

Background

Section 20(a) of the FMIA (21 U.S.C. 620) provides that "No carcasses, parts of carcasses, meat or meat food products * * * which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all * * * other provisions of the Act and regulations issued thereunder * * *" Section 20(b) of the FMIA further provides that "The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section unless (1) they are exported by the owner or consignee within the time fixed therefor by the Secretary, or (2) in the case of articles which are not in compliance with the Act solely because of misbranding, such articles are brought into compliance with the Act under supervision of authorized representatives of the Secretary." Section 17(a) and (b) of the PPIA (21 U.S.C. 466) contains similar language for poultry and poultry products, except that no provision is made for poultry products that do not comply because of misbranding to be brought into compliance.

Section 402 of the FMIA (21 U.S.C. 672) provides that "Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative."

Section 403(a) of the FMIA (21 U.S.C. 673) provides that "Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in commerce otherwise subject to title I or II of this Act, or is held for sale in the United States after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Act, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this Act, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 404 of this Act within the jurisdiction of which the article or animal is found." Sections 19 and 20(a) of the PPIA (21 U.S.C. 467a and 467b) contain similar provisions for poultry and poultry products.

Part 327 of the Federal meat inspection regulations (9 CFR part 327) and subpart T of the poultry products inspection regulations (9 CFR part 381, subpart T) prescribe the requirements for meat and poultry products imported into the United States as authorized by the FMIA and PPIA. Such products imported from any foreign country are inspected by departmental inspectors before they are entered into the United States. The inspectors report their findings to the Director of Customs at the port of entry where such products were offered for entry into the United States.

If any such products are identified as "U.S. Refused Entry", the inspector requests the Director of Customs to refuse entry of the product and to direct the owner or consignee of the refused entry product to export such product within 45 days. The owner or consignee may opt not to reexport the product, but rather may, within the 45-day period, either destroy the product under departmental supervision or convert the product into animal food. As previously discussed, the FMIA contains an exception to this rule that provides that any meat food product which has been refused entry solely because of misbranding may be brought into compliance with the Act under departmental supervision. This exemption is also provided in § 327.13(a)(4) of the Federal meat inspection regulations (9 CFR 327.13(a)(4)).

If the owner or consignee does not take appropriate action within the specified time period, the Acts and regulations authorize the Secretary to destroy the product for human food purposes (9 CFR 327.13(a)(6) and 381.202(a)(5)). This is necessary to prevent adulterated or misbranded product from entering into U.S. commerce.

Section 327.13(a)(7) of the Federal meat inspection regulations and § 381.202(a)(6) of the poultry products inspection regulations prohibit the return to the United States of product which had been refused entry and exported to another country (9 CFR 327.13(a)(7) and 381.202(a)(6)). If such product is returned to the United States, FSIS is authorized under the FMIA and PPIA to administratively detain the product pursuant to section 402 of the FMIA or section 19 of the PPIA, to preclude its distribution in commerce and seek judicial seizure and condemnation of such product in accordance with section 403 of the FMIA or section 20 of the PPIA. The current regulations, however, do not specify that such refused entry product is subject to detention and judicial seizure and condemnation under the law. To clarify the regulations in this regard, FSIS published a proposed rule in the **Federal Register** on January 13, 1989, to amend §§ 327.13 and 381.202 of the Federal meat and poultry products inspection regulations (54 FR 1375). The proposal would specifically provide that such returned, refused entry product shall be subject to administrative detention and judicial seizure and condemnation.

FSIS did not receive any comments in response to the proposal. Therefore, the proposal is adopted in its entirety.

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

For the reasons set forth in the preamble, parts 327 and 381, title 9 of the Code of Federal Regulations, are amended as follows:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Section 327.13 is amended by adding a sentence at the end of paragraph (a)(7) to read as follows:

§ 327.13 Foreign products offered for importation; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(7) * * * Any such product so returned to the United States shall be subject to administrative detention in accordance with section 402 of the Act and seizure and condemnation in accordance with section 403 of the Act.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 381.202 is amended by adding a sentence at the end of paragraph (a)(6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

(a) * * *

(6) * * * Any such product so returned to the United States shall be subject to administrative detention in accordance with section 19 of the Act, and seizure and condemnation in accordance with section 20 of the Act.

* * * * *

Done at Washington, DC, on: November 15, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-28855 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 170

RIN 3150-AC61

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on April 18, 1989 (54 FR 15372), which provides for the issuance of early site permits, standard design certifications, and combined construction permits and operating licenses with conditions for nuclear power reactors. The action is necessary to correct an amendatory instruction that contained an incorrect paragraph identification.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: In the April 18, 1989, edition of the **Federal Register**, in the right-hand column of page 15398, make the following correction to amendatory instruction number 16:

In the amendatory instruction for 10 CFR 51.20, the paragraph designated as paragraph (a)(6) is correctly designated as paragraph (b)(6).

Dated at Bethesda, Maryland, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89-28838 Filed 12-8-89; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 600

RIN 3052-AB07

Organization and Functions; Service of Process

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts final regulations which establish the method to be used to serve legal process upon the agency, including identification of the agency official designated to accept service of process. The adoption of these regulations creates subpart B—Rules and Procedures for Service Upon the Farm Credit Administration—now held in reserve within 12 CFR part 600.

EFFECTIVE DATE: These regulations shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary L. Bohlke, Associate General Counsel, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: These regulations establish the proper procedures to follow in order to serve legal process upon the FCA. They provide the individual designated to receive such service, as well as the method of delivery. In promulgating the regulations, the FCA Board determined that the matter was one of internal agency procedure and practice and was exempt from the provisions of 5 U.S.C. 553(b) (1)-(3). The purpose of the rulemaking requirements of the Administrative Procedure Act is to allow public participation in the promulgation of rules which have a substantial impact on those regulated.

When regulations involve matters of agency procedure or practice, or where the agency finds good cause that the notice and public comment are unnecessary or contrary to the public interest, 5 U.S.C. 553(b) (A) and (B) provide that an agency may publish regulations in final form. Accordingly, these regulations are issued as a final rule.

Pursuant to 5 U.S.C. 553(d) and 12 U.S.C. 2252(c)(1), these regulations will be effective after the expiration of 30 days from publication during which either or both Houses of the Congress are in session.

List of Subjects in 12 CFR Part 600

Organization and functions (Government agencies).

As stated in the preamble, part 600 of chapter VI, title 12, of the Code of Federal Regulations is amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

1. The authority citation for part 600 continues to read as set forth below and all other authority citations throughout part 600 are removed.

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

2. Part 600 is amended by adding a new subpart B, consisting of § 600.10, to read as follows:

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

§ 600.10 Service of Process.

(a) Except as otherwise provided in the Farm Credit Administration regulations, the Federal Rules of Civil Procedure or by order of a court with jurisdiction over the Farm Credit Administration, any legal process upon the Farm Credit Administration shall be duly issued and served upon the Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) Service of process upon the Secretary to the Farm Credit Administration Board may be effected by personally delivering a copy of the documents to the Secretary or by sending a copy of the documents to the Secretary by registered or certified mail.

(c) The Secretary shall promptly forward a copy of all documents to the Associate General Counsel, Litigation and Enforcement, and to any Farm Credit Administration personnel named in the caption of the documents.

Dated: December 1, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–28836 Filed 12–8–89; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Parts 612, 614, 615, and 618

RIN 3052–AB06

Personnel Administration, Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts as final an interim rule which eliminates the requirement for Farm Credit institutions to submit to the FCA certain proposed policies, procedures, programs and actions for FCA's approval prior to implementation by the institution. These submissions by the institution are referred to collectively as "prior approvals".

The FCA Board determined that certain prior approvals are unnecessary in light of the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971 (Act) and Congressional intent, and are inconsistent with FCA's role as an arms's length regulator.

The elimination of these prior approvals does not relieve the Farm Credit institutions of their responsibility to develop and implement the policies, procedures, programs, and actions referred to in these regulations and to operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations. Such policies, procedures, programs, and actions continue to be subject to examination by FCA.

DATES: This regulation shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Jr., Deputy Chief, Financial Analysis and Standards Division, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4401, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On January 6, 1989, the FCA Board adopted an interim rule (54 FR 1149) and requested public comments thereon. The interim rule eliminated prior approval language contained in the following regulations: §§ 612.2150 (a) and (c); 612.2160(a); 614.4280 (a) and (b); 614.4320; 614.4321; 614.4340(a); 614.4345; 614.4460; 614.4511; 615.5040; 615.5104; 615.5135(b); 615.5143; 615.5190(b); and 618.8060. The Farm Credit Amendments Act of 1985, the Farm Credit Act Amendments of 1986, and the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971 (Act), specifically eliminated certain prior approvals from the Act. In addition, the FCA Board interpreted Congressional intent, based on those prior approvals specifically eliminated, to require the elimination of other prior approvals. Finally, the FCA Board determined that certain prior approvals should be eliminated as being inconsistent with FCA's role as an arm's length regulator. See 54 FR 1149, January 12, 1989, for a further discussion of the basis for removal of the individual prior approval requirements.

The FCA received two comments: one from the Farm Credit Corporation of America (FCCA), and one from the Farm Credit Bank of Baltimore (FCBB). Both commenters agreed with the FCA's action of eliminating the prior approvals as set forth in the interim rule. The FCCA also urged FCA to consider the elimination of certain other prior approvals not included in the interim rule. The FCBB concurred with the FCCA comment. FCA is continuing to examine prior approval requirements, including some of those which were discussed by the commenters, to determine whether such prior approvals should be eliminated. However, no action is proposed at this time.

Accordingly, the FCA Board adopts the interim rule amending 12 CFR parts 612, 614, 615, and 618 which was published at 54 FR 1149 on January 12, 1989, as a final rule without change.

List of Subjects in 12 CFR Parts 612, 614, 615, and 618

Accounting, Agriculture, Archives and records, Banks, Banking, Conflict of interest, Credit, Foreign trade, Government securities, Insurance, Investments, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

Dated: December 1, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–28837 Filed 12–8–89; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25147, Amdt. No. 23–36]

Small Airplane Airworthiness Review Program, Amendment No. 1; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcton of final rule.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on August 15, 1988 (53 FR 30802) as Small Airplane Airworthiness Review Program, Amendment No. 1. These rules relate to the adopton of airworthiness standards for cabin safety and occupant protection during emergency landing conditions for airplanes type certificated to the airworthiness standards of part 23.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE–

110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION: When Amendment No. 23-36 was published in the **Federal Register**, an inadvertent error occurred. For accuracy of information, it is necessary to correct this error.

Need for immediate adoption: Since this amendment only corrects an error and imposes no additional burden on any person, I find that notice and public procedures are unnecessary and contrary to the public interest and that good cause exists for making it effective in less than 30 days.

Correction of Publication

Accordingly, in addition to the corrections published in the **Federal Register** on September 2, 1988 (53 FR 34194), the publication of Amendment No. 23-36 in the **Federal Register** issue of August 15, 1988 (53 FR 30802), is corrected as follows:

§ 23.785 [Corrected]

1. On page 30814, second column, § 23.785(m), in line ten, the referenced paragraph "§ 23.561(b)(3)" is corrected to read "§ 23.561(b)(2)."

2. On page 30814, second column, § 23.785(m)(2), in line five, the referenced paragraph "§ 23.561(b)(3)" is corrected to read "§ 23.561(b)(2)."

Issued in Washington, DC, on November 30, 1989.

Debbie E. Swank,

Acting Manager, Program Management Staff.

[FR Doc. 89-28795 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AWP-22]

Transition Area, Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition. This route addition and airspace change will help to decongest general aviation routings in the Las Vegas terminal area and increase ATC system efficiency.

EFFECTIVE DATE: 0901 u.t.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

History

On September 26, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition (54 FR 39414). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal are received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71-DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Las Vegas, NV [Amended]

In the twelveth line in between "114°14'00"," and "to lat. 35°39'00" N.", insert "to lat. 35°56'00" N., long. 114°14'00" W.; to lat. 35°43'00" N., long. 113°51'00" W.; to lat. 35°35'15" N., long. 113°55'30" W.; to lat. 35°35'00" N., long. 113°56'00" W., to lat. 35°44'45" N., long. 114°14'00" W."

Issued in Los Angeles, California, on November 22, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region

[FR Doc. 89-28796 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 87P-0144]

Medical Devices; Reclassification and Codification of Absorbable Surgical Gut Suture

AGENCY: Food and Drug Administration.

ACTION: Final rule; notice of reclassification and codification.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to a manufacturer reclassifying the absorbable surgical gut suture from class III to class II. The order is being codified in the Code of Federal Regulations as specified herein.

DATES: The reclassification was effective October 9, 1988. This codification becomes effective January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On April 21, 1987, FDA filed the reclassification

petition submitted by Advanced Biosearch Associates, Danville, CA 94526–4617, on behalf of United States Surgical Corp. (U.S. Surgical), Norwalk, CT 06856, requesting reclassification of the absorbable surgical gut suture from class III to class II.

FDA consulted with the General and Plastic Surgery Devices Panel (the Panel). The Panel, during an open public meeting on August 28, 1987, recommended that FDA reclassify the absorbable surgical gut suture from class III into class II, and that such reclassification not take effect until the effective date of a performance standard for the device established under section 514 of the Federal Food, Drug, and Cosmetic Act (the act).

FDA has fully considered the Panel's recommendation, and reviewed various statements offered by persons who oppose U.S. Surgical's petition for reclassification of the absorbable surgical gut suture. After reviewing all data in the petition and presented before the Panel, and after considering the Panel's meeting, FDA, based on the information set forth, is ordering the reclassification of the absorbable surgical gut suture from class III to class II. On September 19, 1988, FDA sent to the petitioner a letter (order) which reclassified the absorbable surgical gut suture, and substantially equivalent devices of this generic type, from class III to class II, with a low priority for the development of a performance standard.

On November 8, 1988, American Cyanamid Co., Davis and Geck Division, and Ethicon, Inc., petitioned FDA for reconsideration of the order reclassifying the absorbable surgical gut suture from class III to class II. On August 23, 1988, FDA sent to American Cyanamid Co., Davis and Geck Division, and Ethicon, Inc., letters which stated that, after careful review of the petitions and a costly and extensive review of the order of September 19, 1988, and all supporting references, no basis exists to alter the agency's decision to reclassify the absorbable surgical gut suture from class III to class II.

As required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device from class III to class II. In addition, FDA is issuing a final rule that codifies the reclassification of the device by adding new § 878.4830 Absorbable surgical gut suture.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291 nor an analysis under the Regulatory Flexibility Act (Pub. L. 96–354). This reclassification will not have a significant economic impact on a substantial number of small entities. All manufacturers of absorbable surgical gut sutures will be relieved of the costs of complying with the premarket approval requirement in section 515 of the act (21 U.S.C. 360e).

There are no offsetting costs that manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings attributable to this reclassification is dependent upon the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 878.4830 is added to subpart E to read as follows:

§ 878.4830 Absorbable surgical gut suture.

(a) *Identification.* An absorbable surgical gut suture, both plain and chromic, is an absorbable, sterile, flexible thread prepared from either the serosal connective tissue layer of beef (bovine) or the submucosal fibrous tissue of sheep (ovine) intestine, and is intended for use in soft tissue approximation.

(b) *Classification.* Class II.

Dated: December 5, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28826 Filed 12–8–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Officials

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: The Administrator of the Drug Enforcement Administration, U.S. Department of Justice, is amending this subpart R of the regulations to redelegate certain additional functions and authority which were vested in him by the Chemical Diversion and Trafficking Act of 1988 and other legislation enacted since the last amendment of this subpart.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen H. Greene, Deputy Assistant Administrator, Operations Division, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7927.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988, Title VI, Subtitle A, of the Anti-Drug Abuse Act of 1988 [CDTA], Public Law 100–690, was enacted on November 18, 1988. All of the provisions of this legislation are now in effect. The CDTA authorizes the Attorney General to administer and enforce the various provisions of this legislation which amends the Controlled Substances Act, 21 U.S.C. 801, et seq., and the Controlled Substances Import and Export Act, 21 U.S.C. 951, et seq. The Attorney General has delegated his functions to the Administrator of the Drug Enforcement Administration. See 21 U.S.C. 871(a) and 965, and 28 CFR 0.100(b). Pursuant to this delegation, the Administrator has promulgated final regulations for the administration of the CDTA. These regulations were published at 54 FR 31657 on August 1, 1989, and became fully effective on October 30, 1989. To further enhance the enforcement of the CDTA and its attendant regulations, the Administrator is further delegating some of his functions to other DEA officials.

Accordingly, the Administrator is delegating to the Deputy Assistant Administrator, Operations Division, the authority to furnish regulated persons with the descriptions or identifying characteristics of persons with whom regulated transactions may not be completed without prior approval of the Administration; the authority to approve

such transactions under 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and the authority to disapprove or disqualify a regular supplier or regular customer under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24. The Administrator is further delegating to the Deputy Assistant Administrator, Office of Diversion Control, the authority to promulgate and amend regulations under 21 CFR parts 1310 and 1313.

21 U.S.C. 824(g) provides that the Attorney General may, under certain circumstances, seize or place under seal controlled substances owned or possessed by a registrant whose DEA registration has expired or who has ceased to practice or do business in the manner contemplated by his registration. This authority has been delegated to the Administrator but has not been further delegated to DEA field personnel. Accordingly, the Administrator is delegating to DEA Diversion Investigators the authority to seize or place controlled substances under seal; DEA Special Agents-in-Charge are authorized to take custody of, and make disposition of, such controlled substances, as required by 21 U.S.C. 824(g).

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to sections 1(a)(3) and 1(b) of E.O. 12291, this action is not a major rule and relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with E.O. 12616. It has been determined that this matter has no federalism implications which would warrant the preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, Appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 4241 et seq., 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904, 965; 22 U.S.C. 283a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. The Appendix to subpart R is amended as follows:

Appendix to Subpart R—Redelegation of Functions

a. Section 2 is amended by adding at the end thereof the following new sentence:

Sec. 2. *Supervisors.* * * * All DEA Special Agents-in-Charge are authorized to take custody of, and make disposition of, controlled substances seized pursuant to 21 U.S.C. 824(g).

b. Section 3 is amended by revising paragraph (b) to read as follows:

Sec. 3. *Enforcement officers.*

* * * * *

(b) All DEA Diversion Investigators (series 1810 under Office of Personnel Management regulations) are authorized to administer oaths and serve subpoenas under 21 U.S.C. 875 and 876; to conduct administrative inspections and execute administrative inspection warrants under 21 U.S.C. 878(2) and 880; to seize property incident to compliance and registration inspections and investigations under 21 U.S.C. 881; and to seize or place controlled substances under seal pursuant to 21 U.S.C. 824.

c. Section 7 is amended by redesignating the existing paragraphs (h) and (i) as (i) and (j), respectively, and by adding the following new paragraphs (h) and (k):

Sec. 7. *Promulgation of regulations.*

* * * * *

(h) Part 1310, relating to records, reports and identification of parties to transactions in listed chemicals and certain machinery, but not including the authority to add and delete listed chemicals pursuant to 21 CFR 1310.02.

* * * * *

(k) Part 1313, relating to the importation and exportation of precursors and essential chemicals, but not including the authority to suspend shipments under 21 CFR 1313.41.

d. A new section 9 is added to the Appendix to subpart R, as follows:

Sec. 9. *Chemical Diversion Act Functions.* The Deputy Assistant Administrator of the DEA, Operations Division, is authorized to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transaction pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular supplier status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24.

Dated: December 4, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–28808 Filed 12–8–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions, and defer decision on various parts of a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), as administered by the Colorado Mined Land Reclamation Division (MLRD) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the small operator assistance program, use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, permitting, alluvial valley floors, backfilling and grading, archeology and cultural resources, vegetation, mountaintop removal mining, bonding, air pollution control plan and civil penalties. Colorado is modifying its approved program to be consistent with SMCRA and the Federal regulations and to improve the operational efficiency of its approved program. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program as administered by the MLRD. Information regarding the general background on the Colorado program, including the Secretary's

findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15 and 906.30.

II. Submission of Proposed Amendment

By letter dated August 23, 1988, Colorado submitted to OSM the proposed amendment (Administrative Record No. CO–384) to the Colorado program. The State submitted the majority of this proposed amendment in response to OSM's letters dated May 7, 1989 (Administrative Record No. CO–282) and June 9, 1987 (Administrative Record No. CO–342). These letters were issued in accordance with 30 CFR 732.17(d) and notified Colorado of required amendments to its program. The remainder of the proposed amendment was submitted at Colorado's initiative in order to improve its program. The amendment pertains to the small operator assistance program, use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, permitting, alluvial valley floors, backfilling and grading, archeology and cultural resources, vegetation, mountaintop removal mining, bonding, air pollution control plan, and civil penalties.

OSM published a notice in the **Federal Register** on October 5, 1988 (53 FR 39105), announcing receipt of the proposed amendment to the Colorado program and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. CO–399). After reviewing the proposed amendment and all comments received, OSM notified Colorado by letter dated February 7, 1989 (Administrative Record No. CO–428), of several provisions in its proposal that appeared to be inconsistent with the Federal regulations. By letter dated April 10, 1989 (Administrative Record No. CO–433), Colorado provided further clarification of and submitted revisions to the amendment. Colorado also requested that certain proposed revisions be withdrawn from consideration. The additional explanatory information and revisions pertained to the use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, alluvial valley floors, backfilling and grading, and archeology and cultural resources. The withdrawn provisions pertained to the use of explosives, hydrology and geology, coal mine waste, and backfilling and grading.

To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in the **Federal Register** on May 15, 1989 (54 FR 20862), reopening and extending the comment period (Administrative Record No. CO–443). The extended comment period closed on May 30, 1989. (Please note the following correction to a typographical error in 54 FR 20862. OSM announced that Colorado withdrew Rule 4.14.6, backfilling and grading, which should have been part of 4.14.1.) After reviewing the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated June 15, 1989 (Administrative Record No. CO–450), of a few provisions in its proposal that continued to be inconsistent with the Federal regulations. By letter dated June 28, 1989 (Administrative) Record No. CO–455), Colorado responded by withdrawing all but one of these provisions. These withdrawn provisions pertain to excess spoil, coal exploration, hydrology and geology, siltation structures and impoundments, alluvial valley floors, and archeology and cultural resources. Also, by letter dated July 12, 1989 (Administrative Record No. CO–456), Colorado submitted a correction of a typographical error to one provision pertaining to siltation structures and impoundments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Colorado on August 23, 1988, and subsequently revised on April 10, June 28, and July 12, 1989. Any provisions not specifically discussed meet the requirements of SMCRA and 30 CFR chapter VII; these provisions contain language similar to the corresponding Federal provisions. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM oversight of the Colorado program. Provisions discussed are those which are substantively different from the Federal counterpart regulations.

1. Substantive Revisions to Colorado's Program That Are Substantially Similar to the Counterpart Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantially similar to the corresponding Federal regulations: Rules 2.09.2, .3, .5, .6, and .8—small operator assistance program; 2.05.3, 4.08.1, .2, .4, .5, and .6—use of explosives; 1.04, 2.06.7, 4.09, 4.09.1, .2, .3, and .4, and 4.11.4—excess spoil; 1.04, 2.02.3 and .5, 4.21.4, and 7.08—coal exploration; 1.04, 2.03, 2.03.3, 2.04.6, and .7, 2.05.6, 4.05.1, .5, .8, .13 and .16, and 4.07.2—hydrology and geology; 4.05.3 and 4.05.4—diversions; 1.04, 2.05.3, 4.05.2, .6, and .9, and 4.11.5—siltation structures and impoundments; 1.04, 2.05.3, 4.09.2 and .3, 4.10, 4.10.1, .2, .3 and .4, 4.11, and 4.11.1, .2, .3 and .5—coal mine waste; 2.03.5, 2.04.4 and .13, 2.05.4, 2.07.3, .4, and .5, 2.08.4, .5, and .6, and 2.10.3—permitting; 1.04, 2.06.8, and 4.24.2, .3, .4, and .5—alluvial valley floors; 2.05.4, and 4.14.1, .2, and .6—backfilling and grading; 2.02.3, 2.04.4, and 2.05.6—archeology and cultural resources; 1.04—vegetation; 2.06.3—mountaintop removal; 3.02.4 and 3.03.2—bonding; 4.17—air pollution control plan; and 5.04.3—civil penalties. The Director, therefore, finds these proposed revisions to Colorado's rules to be no less effective than the corresponding Federal regulations.

2. Storm Event Design Criteria for Impoundments and Diversions, Rules 4.09.4(6) and 4.11.5(3)(b)

Colorado's existing rules at 4.09.4(6) and 4.11.5(3)(b) specify storm event design criteria for coal mine waste impounding structures and for excess spoil diversions. Colorado proposes that the 100-year, 24-hour storm event be utilized. The corresponding Federal regulations at 30 CFR 816/817.73(f) and .84(b)(2) require that the 100-year, 6-hour storm event be utilized in design specifications. OSM notified Colorado of this inconsistency, noting that 6-hour duration events normally result in larger peak flow than do 24-hour duration events, and required that Colorado substitute the 6-hour criterion for the 24-hour criterion, or present data demonstrating that the 24-hour duration event normally produces larger peak flows under conditions encountered in Colorado. Colorado chose the latter option.

In its justification (Administrative Record No. CO–389), Colorado provided several examples for mine sites in both western and eastern Colorado, comparing 6-hour to 24-hour duration storm peak flows. The results indicate that for Western slope Colorado mines, 24-hour duration storms produce higher peaks than 6-hour duration storms, other variables being constant. For Eastern slope Colorado mines, results indicate that 6-hour duration storms could result in higher peak flows than the 24-hour duration storms in specific situations.

The percentage differences in peak flows for the two durations appear to be within error ranges expected for the modeling techniques used. Colorado also pointed out that its rules provide for "or larger events as required by the (Mined Land Reclamation) Division" which allows latitude for specifying the 6-hour duration criterion in situations where it will produce a larger peak flow. On this basis and because most mining in Colorado is on the Western slope, the Director finds Colorado's rules at 4.09.4(6) and 4.11.5(3)(b), which specify the 24-hour duration criterion for spillway and diversion designs, to be no less effective than the Federal regulations at 30 CFR 816/817.73(f) and .84(b)(2).

In making this decision, the Director notes that OSM on October 27, 1988, revised the Federal regulations at 816/817.84(b)(2) by changing the 100-year, 6-hour precipitation event criterion to the probable maximum precipitation of a 6-hour or greater precipitation event (PMP; 53 FR 43584). These revised regulations do not affect OSM's approval of Colorado's proposed 24-hour storm duration criteria, but they do render Colorado's existing rule less effective with respect to the PMP criterion. By letter dated October 13, 1989 (Administrative Record No. CO–472), OSM notified Colorado in accordance with 30 CFR 732.17(d) of this required amendment to the Colorado program.

3. Cut-and-Fill Terraces on Previously Mined Areas, Rules 4.14.2 (1) and (2)(c).

The existing Colorado rule at 4.14.2(2)(c) states that in no case shall highwalls be left as part of a cut-and-fill terrace. Colorado proposed to amend this rule by adding language that would allow highwalls to be left as part of a cut-and-fill terrace only if "approved for previously mined areas in accordance with Rule 4.14.2(1)." Colorado's rule at 4.14.2(1) requires that final grades slopes shall approximate premining slopes, or any lesser slopes approved by Colorado. It allows Colorado to modify the requirements of Rule 4.14.2 where the surface coal mined lands have not been restored to the standards of the rules and sufficient spoil is not available to otherwise comply with Rule 4.14.

The Federal regulations at 30 CFR 816.106 outline the requirements for backfilling and grading of previously mined areas. This regulation exempts the elimination of highwalls on previously mined areas where there is not sufficient spoil available; but the exemption for elimination of highwalls is not extended to cut-and-fill terraces, whose governing regulations are located at 30 CFR 816.103(g). OSM questioned Colorado's interpretation of the proposed rule and required that Colorado define the term "previously mined areas" to provide an operator with guidance as to when this proposed rule would be applicable.

Colorado responded in its April 10, 1989 submittal clarifying that the proposed rule would be applied so that all available spoil would be used to reclaim a highwall in a previously mined area and that all highwalls would be eliminated to the extent possible. Colorado also clarified that no highwalls associated with cut-and-fill terraces would be allowed and proposed a definition for "previously mined areas" at Rule 1.04(94a), which is identical to the Federal definition at 30 CFR 701.5. Based on Colorado's clarification, the Director finds Colorado's proposed rule at 4.14.2(2)(c) to be no less effective than the Federal regulations at 30 CFR 816/817.106.

4. Water-Monitoring Data Reporting, Rules 4.05.13 (2) and (4)

Colorado proposed to delete from its existing rule at 4.05.13(2)(a) the requirement that ground- and surface-water monitoring reports be submitted quarterly, and instead require that these reports be submitted annually. These annual reports are to include results from samples taken during each quarter. The Federal regulations at 30 CFR 816/817.41 (c)(2) and (e)(2) require that ground- and surface-water monitoring reports be submitted quarterly. In its April 10, 1989, submittal, Colorado explained that water-monitoring data is collected quarterly and must be on file at the mine office as specified in Rule 4.05.13(4)(a). As part of its complete inspection, which is conducted quarterly, Colorado is required to evaluate all records, including hydrologic monitoring data. The lead reclamation specialist for each mine is responsible for conducting the complete inspection and reviewing the data. This is the same person who is also responsible for all permitting activities and is knowledgeable about the hydrologic monitoring requirements for the mine. When all hydrologic monitoring data collected during the year is submitted to Colorado on an annual basis, it is thoroughly reviewed by the lead reclamation specialist and a hydrologist. Based on this clarification of Colorado's inspection and permitting procedures and requirements, the Director finds the proposed rule changes at 4.05.13 (2) and (4) to be no less effective than the Federal regulations at 30 CFR 816/817.41 (c)(2) and (e)(2).

5. Design Capacity for Perennial and Intermittent Stream Diversions, Rule 4.05.4(2)(b)

Colorado's proposed rule at 4.05.4(2)(b), as modified in its April 10, 1989, submittal, requires that the capacity of the stream channel diversion be at least equal to the hydraulic stream channel immediately upstream and downstream of the diversion. The Federal regulations at 30 CFR 816/817.43(b)(2) are worded similarly except that in place of "hydraulic stream channel," the Federal regulations are worded "capacity of the unmodified stream channel." Colorado explained that the word "hydraulic" was proposed to clarify that the reclaimed channel morphology (shape) should be determined by analyzing the active flow channel, upstream and downstream, which is formed by hydraulic processes. This flow channel may be a small part of a much larger geomorphic feature such as a gully or arroyo (dry gulch). Gullies and arroyo features are the result of both hydraulic and mass movement processes; therefore, it is not necessarily appropriate to design a reclaimed channel by duplicating a large arroyo configuration, when the prevailing flow conditions dictate a smaller hydraulic channel. The proposed wording provides an operator and Colorado the opportunity to distinguish a large erosional feature such as an arroyo from the actual hydraulic flow channel which often represents a small portion of the larger erosional feature. Based upon the above clarification, the Director finds the proposed rule at 4.05.4(2)(b) to be no less effective than the Federal regulations at 30 CFR 816/817.43(b)(2).

6. Minimum Requirements for Surface- and Ground-Water Monitoring Plans, Rule 2.05.6(3)(b)(iv)

Colorado's proposed rule at 2.05.6(3)(b)(iv) requires operators, at a minimum, to monitor the level of total dissolved solids or electrical conductivity corrected to 25 °C, pH, and iron in both surface and ground water. The corresponding Federal regulations at 30 CFR 780.21 (i) and (j) and 784.14 (h) and (i) require mine operators to monitor total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese in surface and ground water. Thus, Colorado proposed to delete "total" from "total iron" and to delete "total manganese" from its provision; the Federal regulations require "total iron and total manganese." Colorado stated in its April 10, 1989, submittal to OSM

that Rule 2.05.6(3)(b)(iv) addresses the minimum data required for a monitoring plan and that if the baseline data (required at Rules 2.04.7 (1) and (2)(b)) indicate a problem with total iron or total manganese, Colorado would require the parameters to be included in the monitoring plans. (Baseline information is representative of the environment prior to mining while monitoring data provides information regarding the mine's effect on the environment.)

Colorado's rule for baseline surface-water information, Rule 2.04.7(2)(b), requires data for both total iron and total manganese as do the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2). However, Colorado's ground-water baseline information requirements at Rule 2.04.7(1) do not require specific parameters, but only "the seasonal quantity and quality of the water within each aquifer." Because specific parameters, including total iron and total manganese, are not detailed in Colorado's rule requiring baseline ground-water information, Colorado has no basis for determining whether an operator should be required to monitor the ground-water for total iron and total manganese. The counterpart Federal regulations for ground-water baseline water quality information at 30 CFR 780.21(b)(1) and 784.14(b)(1) require, at a minimum, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

The revised Colorado rule at 2.05.6(3)(b)(iv), in conjunction with the existing rule at 2.04.7(2)(b), is no less effective than the Federal regulations at 30 CFR 780.21 (b)(2) and (j) and 784.14 (b)(2) and (i) with respect to surface-water baseline information requirements and surface-water monitoring requirements. However, the Director finds the revised rule at 2.05.6(3)(b)(iv), in conjunction with the existing rule at 2.04.7(1), to be less effective than the Federal regulations at 30 CFR 780.21 (b)(1) and (i) and 784.14 (b)(1) and (h) with respect to ground-water baseline information requirements and ground-water monitoring requirements. Accordingly, the Director is not approving Rule 2.05.6(3)(b)(iv) and is requiring that Colorado either (1) amend its rule at 2.05.6(3)(b)(iv) to include in the requirements for ground-water monitoring plans both total iron and total manganese, or (2) further amend its ground-water baseline information requirements at Rule 2.04.7(1) to specifically require at a minimum, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

7. Water Quality Standards and Effluent Limitations. Rules 4.05.2(6), 4.05.2(7) and 4.05.6(2), 4.05.3, 4.05.5(1)(b), and 4.05.9(1)(a)

Colorado requires under a number of rules in § 4.05, Hydrologic Balance, compliance with water quality standards and effluent limitations. However, Colorado does not consistently use the same language as the counterpart Federal regulations. At Rule 4.05.2(6) Colorado requires that mixed drainages from disturbed and nondisturbed areas meet applicable State or Federal effluent limitations. The Federal regulations at 30 CFR 816/817.42 require all drainage from disturbed areas to meet State and Federal water quality laws and applicable effluent limitations under 40 CFR part 434. At Rule 4.05.2(7), Colorado's proposed rule regarding siltation structure design refers to "the Colorado Water Quality Act." Colorado's proposed rule at 4.05.6(2) requires all siltation structures be designed to meet Federal and State water quality standards. The Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B) require that siltation structures be designed "to meet State and Federal effluent limitations." At Rule 4.05.3, Colorado does not require that diversions of overland flow, shallow ground water, and ephemeral streams be designed to comply with all local, State and Federal regulations, as do the Federal requirements for all diversions, including miscellaneous flows (which is OSM's equivalent of overland flow, shallow ground water and ephemeral streams), at 30 CFR 816/817.43 (a)(2)(iv) and (c). At Rule 4.05.5(1)(b), Colorado proposes to require that sediment control measures "meet applicable State or Federal effluent limitations" while the Federal regulations at 30 CFR 816/817.45(a)(2) require that such measures "meet the more stringent of applicable State or Federal effluent limitations." At Rule 4.05.9(1)(a), Colorado's proposed rules require that the quality of impounded water shall be suitable on a permanent basis for its intended use, and discharge from impoundments shall meet State and Federal effluent limitations, while the Federal regulations at 30 CFR 816/817.49(b)(2) require that water in permanent impoundments shall meet State and Federal water quality standards, and discharge will meet State and Federal effluent limitations.

OSM expressed concern that the proposed revisions to the Colorado program did not clearly require that all State and Federal water quality standards and/or effluent limitations be met. In its April 10, 1989, submittal, Colorado explained that while the specific language used throughout § 4.05 may vary, the existing general requirement at Rule 4.05.1(3) applies to all of § 4.05. It states, "in no case shall Federal and State water quality statutes, regulations, standards, or effluent limitations be violated." With this clarification of Colorado's rules and policy, the Director finds Colorado's proposed rules at 4.05.2(6), 4.05.2(7), 4.05.6(2), 4.05.3, 4.05.5(1)(b), and 4.05.9(1)(a) to be no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B), .42, .43 (a)(2)(iv) and (c), .45(a)(2), and .49(b)(2).

8. Coal Exploration-Definition of "Substantially Disturb," Rule 1.04(172)

Colorado's proposed definition of "substantially disturb" for purposes of coal exploration at Rule 1.04(127) is similar to the Federal definition at 30 CFR 701.5 with the exception that the Federal regulation includes in its definition the removal of topsoil and of overburden where the Colorado proposed rule cites mechanical excavation. Colorado affirms that mechanical excavation includes the removal of soil (Administrative Record No. CO–473). Based on this clarification, the Director finds the proposed definition of "substantially disturb" at Rule 1.04(127) to be no less effective than the corresponding Federal definition at 30 CFR 701.5.

9. Deferral of Decision, Rules 4.08.5(11), 4.05.4(2)(b), 1.04(64), 4.05.6(10), 4.05.9(13), and 104(94a)

Following is a discussion of individual rules for which Colorado submitted further revisions on July 18, 1989 (Administrative Record No. CO–457). The Director is deferring decision on these specific rules until he has made a decision on all the program revisions submitted by Colorado on July 18, 1989.

(a) *Use of Explosives, Rule 4.08.5(11).* The Director is deferring decision on Rule 4.08.5(11) to the extent that it does not require that records or each blast contain the total weight or explosives used per hole and the maximum weight of explosives detonated during any 8-millisecond period.

(b) *Diversions, Rule 4.05.4(2)(b).* The Director is deferring decision on Rule 4.05.4(2)(b) to the extent that it does not require that the capacity of the channel itself *shall* be at least equal to the capacity of the unmodified stream channel immediatly upstream and downstream of the diversion (emphasis added).

(c) *Siltation Structures and Impoundments, Rules 1.04(64), 4.05.6(10),*

and 4.05.9(11). The Director is deferring decision on (1) Rule 1.04(64) to the extent that it does not require that sediment ponds must be designed in accordance with Rule 4.05.9, (2) Rule 4.05.6(10) to the extent that it does not specify that all ponds and impoundments be examined on at least a quarterly basis, and (3) Rule 4.05.9(11) to the extent that it does not require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3, and that other impoundments shall be examined at least quarterly.

(d) *Backfilling and Grading, Rule 1.04(94a).* The Director is deferring decision on Rule 1.04(94a) to the extent that it does not reference SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 5039(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Colorado program. The Mine Safety and Health Administration (MSHA) responded with a comment that the revised definition of the term "impoundment" at Rule 1.04(64) as submitted by Colorado on April 10, 1989, needed clarification. MSHA questioned the criterion, "surface area greater than 20 feet," that would designate which sediment ponds, used to store water, would be regulated in accordance with other specified Colorado rules. MSHA pointed out that the 20-foot surface area, if intended to be in square feet, would be an extremely small area. OSM notified Colorado of this comment (Administrative Record No. CO–456), and Colorado responded that this was a typographical error. In its submittal dated July 12, 1989, Colorado has corrected the typographical error, and the proposed language now reads, "surface area of twenty acres."

As required by 30 CFR 732.17(h)(4), OSM provided the proposed and revised amendments, which included provisions having an effect on historic properties, to the State Historic Preservation Officer and to the Advisory council on Historic Preservation for comment. No comments were received.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

EPA reviewed Colorado's August 23, 1988 amendment and on November 9, 1988, and January 30, 1989 (Administrative Records Nos. CO–419 and CO–426), submitted comments to OSM. EPA raised two issues. EPA stated that its concurrence was (1) subject to clarification that Colorado's rules at 4.05.2(2), 4.05.2(6), 4.05.2(7), and 4.05.6(1)(b) require compliance with applicable effluent limitations and State and Federal water quality laws and regulations, and (2) conditional upon Colorado's clarification that its rules do not authorize instream treatment of coal mine wastes.

OSM raised the first issue regarding effluent limitations and water quality standards in its February 7, 1989, letter to Colorado. As discussed in finding No. 6, Colorado stated in its April 10, 1989, response to OSM, that it was not necessary to repeat the requirement that applicable local, State and Federal water quality standards and effluent limitations be met because this is required at Rule 4.05.1, which is a general requirement applying to all of section 4.05. Based on this clarification, EPA gave concurrence on this issue by letter dated June 20, 1989 (Administative Record No. CO–453).

With regard to the second issue, EPA reiterated, in its letter dated June 20, 1989, that its concurrence to Colorado's proposed amendment was dependent upon Colorado's clarification that Colorado's rules did not authorize instream treatment. OSM had raised this issue in its June 15, 1989, letter to Colorado. In its June 28, 1989, response to OSM, Colorado stated that it follows the rules of the Colorado Department of Health, Water Quality Control Division concerning instream treatment of wastes and stated that "instream treatment of mine wastes is not allowed."

Therefore, Colorado has satisified both of EPA's concerns and EPA has granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*)

Colorado also proposed to revise its rule concerning air pollution control plans at Rule 4.17. These changes have no effect upon air quality standards, and EPA's concurrence on them was not necessary. However, the Director, in accordance with 30 CFR 732.17(h)(11)(i), solicited EPA's comments on these changes; none were received.

V. Director's Decision

Based on the above findings, the Director is approving Colorado's program amendment as submitted on August 23, 1988, and revised on April 10, June 28, and July 12, 1989, with the exceptions of (1) the requirements for ground-water monitoring requirements at Rule 2.05.6(3)(b)(iv), which, as discussed in finding No. 6, the Director has determined to be inconsistent with the Federal regulations implementing SMCRA and is therefore not approving it, and (2) Rules 4.08.5(11), 4.05.4(2)(b), 1.04(64), 4.05.6(10), 4.05.9(11), and 1.04(94a) on which, as discussed in finding No. 9, the Director is deferring this decision. The Director is requiring that Colorado further amend its program to correct the less effective provision. As required by 30 CFR 732.17(h)(11)(ii), the Director solicited and received EPA's concurrence on June 20, 1989 (Administrative Record No. CO–453).

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Colorado program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Colorado of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding a new paragraph (m) as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of Rules 2.05.6(3)(b)(iv) (groundwater monitoring), 4.03.5(11) (use of explosives), 4.05.4(2)(b) (surface-water diversions), 1.04(64), 4.05.6(10) and 4.05.9(11) (siltation structures and impoundments), and 1.04(94a) (backfilling and grading), revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on August 23, 1988, and modified and clarified on April 10, June 28, and July 12, 1989, are approved effective December 11, 1989:

2.09.2, .3, .5, .6, and .8	Small Operator Assistance Program.
2.05.3; 4.08.1, .2, .4, .5, and .6.	Use of Explosives.
1.04; 2.06.7; 4.09; 4.09.1, .2, .3, and .4; and 4.11.4.	Excess Spoil.
1.04; 2.02.3 and .5; 4.21.4; and 7.08.	Coal Exploration.
1.04; 2.03; 2.03.3; 2.04.6 and .7; 2.05.8; 4.05.1, .5, .8, .13 and .16; 4.07.2.	Hydrology and Geology.
4.05.3 and 4.05.4	Diversions.
1.04; 2.05.3; 4.05.2, .6, and .9; and 4.11.5.	Siltation Structures and Impoundments.
1.04; 2.05.3; 4.09.2 and .3; 4.10; 4.10.1, .2, .3, and .4; 4.11; 4.11.1, .2, .3, and .5.	Coal Mine Waste.
2.03.5; 2.04.4 and .13; 2.05.4; 2.07.3, .4, and .5; 208.4, .5, and .8; and 2.10.3.	Permitting.
1.04; 2.06.8; 4.24.2, .3, .4, and .5.	Alluvial Valley Floors.
2.05.4; 4.14.1, .2, and .6	Backfilling and Grading.
2.02.3; 2.04.4; and 2.05.6	Archeology and Cultural Resources.
1.04	Vegetation.
2.06.3	Mountaintop Removal.
3.02.4 and 3.03.2	Bonding.
4.17	Air Pollution Control Plan.
5.04.3	Civil Penalties.

4. Section 906.16 is added to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to make the following program amendment by March 12, 1990. Colorado shall amend its rule at 2.05.6(3)(b)(iv) to be consistent with the Federal regulations at 30 CFR 780.21(i) and 784.14(h) by including as required water quality parameters to be monitored, total iron and total manganese, or amend its rule at 2.04.7(1) to be consistent with the Federal regulations at 30 CFR 780.21(b)(1) and 784.14(b)(1) by including at a minimum, as required water quality parameters to be included in ground-water baseline information, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

[FR Doc. 89–28831 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

Amendment to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing approval, with certain exceptions and additional requirements, of a proposed amendment to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* The amendment was submitted to OSM on August 3, 1988 and pertains to: use of explosives, training, examination and certification of blasters, operations on prime farmland, requirements for information on environmental resources, approval of permit applications, and definitions. The amendment revises the State program to be consistent with the corresponding Federal standards and incorporates the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980 the Secretary of the Interior conditionally approved the Missouri program. Information regarding the general background of the Missouri program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the November 21, 1980, Federal Register (45 FR 77027). Actions taken subsequent to approval are found in 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendment

By letter dated August 3, 1988 Missouri submitted to OSM a proposed amendment to certain provisions of the

Land Reclamation Commission Title 10–Division 40 Regulations (Administrative Record No. MO–392). OSM published a notice in the September 2, 1988 **Federal Register** (53 FR 34128) announcing receipt of the proposed amendment and inviting public comment on its adequacy. The public comment period ended October 3, 1988. No public comments were received nor was a public hearing requested.

In a letter dated October 26, 1988 OSM notified the State of OSM concerns regarding the adequacy of several State program provisions (Administrative Record No. MO–405). These provisions included training for recertification of blasters, requirements for exemptions from prime farmland performance standards, water bodies approved as an alternative postmining land use, and a finding requirement for approving long-term, intensive agricultural postmining land use. By letter dated November 22, 1988 (Administrative Record. No. MO–409) Missouri responded to OSM's concerns.

In a letter dated February 23, 1989 OSM notified the State of an additional concern regarding the adequacy of Missouri's definition of "coal processing plant" or "coal preparation plant" (Administrative Record No. MO–424). Missouri responded to this concern by letter dated March 8, 1989 (Administrative Record No. MO–423).

The Missouri amendment consists, *inter alia*, of: proposed revisions to 10 CSR 40–3.050 (1), (2), (3), and (5); and 10 CSR 40–3.210 (1), (2), and (5), all concerning the use of explosives. These revisions respond, in part, to a required program amendment placed on the Missouri program at 30 CFR 925.16 (1) and (2) as discussed in the June 16, 1988 **Federal Register** (53 FR 22475). Proposed regulations at 10 CSR 40–3.160 provide for the training, examination, and certification of blasters.

On March 4, 1983, OSM promulated 30 CFR part 850. This regulation established Federal standards for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations (48 FR 9492). Missouri was required to submit its blaster certification program by March 4, 1984. On August 6, 1984, Missouri requested a 1 year extension (Administrative Record No. MO–272). On October 26, 1984, OSM granted Missouri an extension to August 6, 1985 (49 FR 43055). On August 4, 1985, Missouri advised OSM that it would require another extension of time (Administrative Record No. MO–282). On November 15, 1985, OSM granted Missouri an extension to August 6, 1986 (50 FR 47219). By letter dated March 13, 1986, Missouri formally submitted a proposed amendment concerning blaster certification. But, by letter dated September 18, 1986, Missouri requested that the amendment be withdrawn (Administrative Record No. MO–299). On January 7, 1987, OSM granted this request (52 FR 525). On April 10, 1987, Missouri requested that the submission deadline be extended to June 30, 1988 (Administrative Record MO–309). On November 16, 1987, OSM granted an extension to June 30, 1988 (52 FR 43757).

The amendment also proposes revisions to 10 CSR 40–4.030 (4) and (7) by deleting language that exempts coal preparation plants, support facilities, and roads of surface and underground mines from meeting prime farmland performance standards; allowing water bodies to displace prime farmland as an alternative postmining land use; and adding language to require that where row crops are the dominant crops grown on prime farmland in the area, the row crop with the greatest rooting depth is to be one of the reference crops. These changes are the result of required program amendments placed on Missouri's program at 30 CFR 925.16(m) (1), (2), and (3) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

A revision to 10 CSR 40–6.040(12) would delete the term "existing" in relation to present and potential productivity of prime farmland soil survey informational requirements. This revision was submitted at the State's own initiative.

Proposed revisions to 10 CSR 40–6.070(8) would delete certain permit approval conditions including: A showing that surface coal mining and reclamation operations will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area; a requirement for the applicant to submit a performance bond prior to issuance of a permit; a showing that the applicant has satisfied requirements for approval of a long-term, intensive agricultural postmining land use approved in accordance with the requirements of 10 CSR 40–3.130 or 10 CSR 40–3.300; and a showing that all approvals required under 10 CSR 40–3 and 10 CSR 40–4 have been made. These revisions were submitted at the State's own initiative.

Proposed revisions to 10 CSR 40–8.010(1) would clarify the definition of "coal processing plant" or "coal preparation plant" per a required program amendment placed on the Missouri program at 30 CFR 925.16(m)(4) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that, except as discussed below, the Missouri program amendment submitted on August 3, 1988, meets the requirements of SMCRA and 30 CFR chapter VII. The Director may, however, require further changes in the future as a result of Federal statutory or regulatory revisions.

1. Use of Explosives

(a) At 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 Missouri proposes to delete the requirements that 12 months after approval of the blaster certification program by OSM, a person responsible for removal of coal overburden by means of explosives shall be issued a document attesting to the fact that he has met specified requirements of a blaster as outlined in 10 CSR 40–3.160, and that said person shall conduct all blasting operations accordingly. In its place, Missouri proposes to add the requirement that by July 1, 1989, all blasting operations in Missouri shall be conducted under the direction of a certified blaster. The Federal regulations at 30 CFR 816.61(c) and 817.61(c) require that all blasting operations in a State shall be conducted under the direction of a certified blaster.

In this amendment, Missouri has submitted other proposed regulations that comprehensively address the requirements, at 30 CFR part 850, of OSM's blaster training, examination, and certification program. A detailed discussion of these proposals follows. Upon approval of these proposed regulations, together with the approval of the proposed revisions at 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 Missouri's program will be consistent with the Federal requirements at 30 CFR 816.61(c), 817.61(c) and part 850. Therefore, the Director finds the proposed revisions to 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 to be no less effective than the Federal regulations.

(b) At 10 CSR 40–3.050(1)(D)1.A and 40–3.210(1)(D)1.A Missouri proposes to delete the phrase "or structure" with regard to the requirement that blast designs be submitted if blasting operations will be conducted within 1000 feet of the permit area. At 30 CFR 925.16(1)(2), OSM placed a required program amendment on Missouri to clarify the use of the term "or structure" because the inclusion of the phrase confused the intent of the regulation. By deleting the phrase, Missouri eliminates the confusion and satisfies OSM's

concern; therefore the Director finds this revision to be no less effective than the Federal counterpart regulations at 30 CFR 816.61(d)(1)(i) and 817.61(d)(1)(i). The Director also finds that the required program amendment at 30 CFR 925.16(1)(2) has been satisfied.

(c) At 10 CSR 40-3.050(2)(F) and 40-3.210(2)(F), Missouri proposes that the list of people outlined in the preblast survey must no longer be submitted to the director or commission 30 days prior to blasting. Federal regulations at 30 CFR 816.62 and 817.62 do not require such a list. Accordingly, the Director finds that Missouri's proposed deletion does not render its proposed regulations at 10 CSR 40-3.050(2)(F) and 40-3.210(2)(F) less effective than the Federal regulations.

(d) At 10 CSR 40-3.050(5)(B)2.A and 40-3.210(5)(B)2.A Missouri proposes to revise the requirement to monitor air blasts at the nearest uncontrolled structure from every 3 months to every 12 months. Missouri also proposes to delete the quarterly requirement to submit a record of this monitored event, and has added a required monitoring report date of no later than January 31 of each year for the year being monitored. Federal regulations at 30 CFR 816.67(b)(2) and 817.67(b)(2) provide discretion to the regulatory authority with regard to required monitoring frequency, measurement, and location of air blasts. Missouri's proposed revisions are consistent with the exercise of this discretion; therefore, the Director finds the proposed revisions to be no less effective than the Federal regulations.

(e) At 10 CSR 40-3.050(5)(D)2.A and 40-3.210(5)(D)2.A, Missouri proposes to delete the requirement to limit maximum peak-particle velocity consideration with regard to commercial buildings located outside the permit area. Federal regulations at 30 CFR 816.67(d)(2) and 817.67(d)(2) require such a limitation only with respect to dwellings, public buildings, schools, churches, or community or institutional buildings located outside the permit area. The Federal regulations do not specifically impose the limitation on commercial buildings. Additionally, with the proposed revision, Missouri's regulation is identical to the corresponding Federal regulation. Therefore, the Director finds that Missouri's proposed deletion of commercial buildings from regulation does not render the Missouri regulations at 10 CSR 40-3.050(5)(D)2.A and 40-3.210(5)(D)2.A to be less effective than the Federal regulations.

Missouri proposes other nonsubstantive language deletions or additions at 10 CSR 40-3.050(1)(C)2, (1)(C)3.B, (1)(D)4, (3)(B)2, and 40-3.210(1)(C)2, (1)(C)3.B, and (1)(D)4. The Director finds that these changes are no less effective than the corresponding Federal regulations at 30 CFR 816.61 *et seq.*

2. Training, Examination, and Certification of Blasters

Under 30 CFR 850.12 (a) and (b), States are required to develop and adopt a program to examine and certify persons directly responsible for the use of explosives in surface coal mining and reclamation operations. To satisfy this requirement and its Missouri-specific counterpart at 30 CFR 925.16(i)(1)(ii), Missouri is adding a revised regulation at 10 CSR 40-3.160 to establish a State blaster training, examination, and certification program.

(a) *Definitions.* At 10 CSR 40-3.160(2)(C) Missouri proposes to define a "blaster" as "A person directly responsible for the use of explosives and for the direction of the blasting crew in surface coal mining operations who is certified under this rule." This is substantively identical to the definition provided in the Federal regulations at 30 CFR 850.5 which defines a "blaster" as "a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part." Accordingly, the Director finds this proposed revision to be no less effective than the Federal counterpart regulation at 30 CFR 850.5.

Missouri additionally defines the following terms: application, blast, certification, examination, experience, recertification, re-examination, revocation, surface blasting operations, suspension, and temporary certification, none of which is defined in the Federal regulations. The Director finds that the above definitions provide additional direction and guidance to the Missouri program; are not in conflict or inconsistent with the training, examination, and certification requirements of the Federal blaster program; and are no less effective than the Federal regulations.

(b) *Training.* At 10 CSR 40-3.160(3), Missouri proposes to require that a person seeking certification as a blaster must successfully complete, within the year prior to certification, a formal training course on all the topics listed in Missouri's regulation at 10 CSR 40-3.160(3)(A). Persons seeking recertification as blasters must receive formal training in at least one of the topics listed in 10 CSR 40-3.160(3)(A). The topics listed include various technical aspects as well as current Federal and State regulations applicable to the use of explosives. The Federal regulations at 30 CFR 850.13 and 850.14(b) impose identical requirements for training and course topics. At 10 CSR 40-3.160(3)(B), Missouri specifies training courses approved or sponsored by others that will be deemed acceptable by the State for purposes of meeting the above training requirements. Such other training courses include those approved or sponsored by OSM, other States with OSM approved blaster certification programs, and the Federal Mine Safety and Health Administration (MSHA). All courses must fulfill those requirements outlined in 10 CSR 40-3.160(3)(C)(1) which incorporates a required range of topics equivalent to the requirements of 10 CSR 40-3.160. Additionally, at 10 CSR 40-3.160(3)(C) Missouri proposes to allow other training courses so long as such courses are evaluated and approved by the Missouri Land Reclamation Program based upon their equivalency to the approved programs listed in Missouri's regulation at 10 CFR 40-3.160(3)(A), in terms of course content, instructor qualifications, and number of instructional hours. The Federal regulation at 30 CFR 850.13(b) does not specify the organization that must conduct the required training; the regulation only requires that the regulatory authority ensure that courses are available to train persons responsible for the use of explosives. While Missouri is not proposing to sponsor a course, by accepting training courses that are approved or sponsored by OSM, MSHA, or other states with OSM-approved blaster certification programs, Missouri does provide assurance of availability for training in the topical areas required by Federal regulation.

At 10 CSR 40-3.160(3)(E) Missouri requires persons who are not certified and who are assigned to a blasting crew to receive direction and training by the blaster in charge. The Federal regulation at 30 CFR 850.13(a)(2) contains a substantively identical requirement.

The Director finds that as submitted, the revised provisions of the Missouri blaster training program are no less effective than the training requirements of the counterpart Federal regulations at 30 CFR 850.13.

(c) *Fees.* At 10 CSR 40-3.160(4), Missouri proposes to include a schedule for the submittal of non-refundable fees and time frames and administration of fees associated with its certification and examination program. While the Federal regulations at 30 CFR part 850 do not place such requirements on the program, such requirements are not inconsistent with Federal regulations. Therefore, the Director finds that Missouri's schedule

for fees does not render its program to be less effective than the Federal regulations.

(d) *Application.* At 10 CSR 40–3.160(5), Missouri proposes to specify the requirements for application time frames, required information and supplemental forms for application, criteria for complete applications, and rights to appeal. Proposed revisions to 10 CSR 40–3.160(5)(B)1.A (IV), (V), B and C specifically require statements by the applicants or applicants' employer(s) attesting to experience, formal training, active performance of duties of responsibility, and on-the-job training of the applicant. The proposed revisions at 10 CSR 40–3.160(5)(C) require the Land Reclamation Program to review the application for completeness and accuracy. Proposed revisions at 10 CSR 40–3.160(2)(F) would require persons seeking to become certified as blasters to obtain experience at surface operations and receive on-the-job training from a certified blaster for a period of 12 months within the last 5 year period prior to certification. The Federal regulation at 30 CFR 850.14(a)(2) requires that candidates for blaster certification be examined for practical field experience that demonstrates the candidate possesses practical knowledge of blasting techniques, understands hazards involved, and has exhibited conduct consistent with accepting responsibility for blasting operations. The Missouri regulations require experience and mandate informational requirements in the application that would allow the Land Reclamation Program to make a reasonable judgment of the candidates' qualifications and practical field experience as required by the Federal regulations.

The Director finds that Missouri's proposed revisions to 10 CSR 40–3.160(5)(B) are no less effective than the Federal regulation requirements at 30 CFR 850.14(a)(2) regarding practical field experience. The Director also finds that the additional proposed requirements at 10 CSR 40–3.160(5) are not inconsistent with or less effective than Federal regulations.

(e) *Examination.* Missouri's proposed regulations at 10 CSR 40–3.160(6)(A) require that the competence of persons directly responsible for the use of explosives shall be determined through written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives. The corresponding Federal regulation at 30 CFR 850.14(a)(1) contains this same requirement. At 10 CSR 40–3.160(6)(B), Missouri proposes to require that applicants for blaster certification be examined on topics set forth in its regulations at 10 CSR 40.3.160(3)(A). The Federal regulation at 30 CFR 850.14(b) imposes this same requirement and references a list of topics at 30 CFR 850.13(b) that is substantially the same as that set forth in 10 CSR 40–3.160(3)(A).

Missouri's proposed regulations at 10 CSR 40–3.160(6) (C), (D), (E), and (F) provide administrative direction and procedures for time frames for examination, requirements for taking the examination, consequence of failure to take the examination, test results with regard to pass or failure, re-examination, and review of test results. Although such direction and procedures are not required by Federal regulation they do not make the Missouri regulation and program less effective than the Federal regulations.

At 10 CSR 40–3.160(6)(F)1., Missouri would require an eighty percent (80 percent) score on the examination to constitute a passing grade. The Director's representative has reviewed the Missouri blaster certification examination and by letter dated April 4, 1989, has found it to be technically adequate for the specified 80 percent minimum passing score required in Missouri's regulation.

The Director finds the Missouri regulation that addresses blaster certification examination to be consistent with and no less effective than the Federal regulation examination requirements at 30 CFR 850.14.

(f) *Certification.* Among other things, Missouri's proposed regulation at 10 CSR 40–3.160(7) provides for the issuance of certification, certificate conditions, recertification, protection of certifications, and suspension and revocation requirements either substantively identical to, or consistent with the requirements set forth in the corresponding Federal regulations at 30 CFR 850.15. Additionally, Missouri includes other State-specific provisions that do not have a Federal counterpart which (1) provide criteria for determining whether a certificate will be issued at the time of initial certification or recertification, (2) establish administrative actions on recertification applications where a blaster's certificate has been suspended or revoked, (3) allow for the issuance of a temporary certificate if a person holds a valid certificate issued in other states having an OSM-approved blaster certification program, (4) establish procedures for the immediate issuance of a suspension prior to an opportunity for hearing, and (5) establish criteria for the terms and conditions of each order of suspension or revocation given by the Land Reclamation Commission. Missouri also provides more detailed procedural requirements than those provided in the Federal regulations. The additional provisions are not inconsistent or in conflict with the Federal requirements at 30 CFR part 850. Therefore, the Director finds that the Missouri blaster certification requirements are no less effective than the Federal requirements.

(g) *Certificate at the mine site.* At 10 CSR 40–3.160(7)(C)5, Missouri proposes to require that a certified blaster have the certificate on his/her person at the mine site. This satisfies a required program amendment at 30 CFR 925.16(1)(3) as discussed in the June 16, 1988 **Federal Register** (53 FR 22475) that Missouri amend its program to require that blaster certificates be carried by blasters or be on file at the permit area during blasting operations per 30 CFR 816.61(c)(2) and 827.61(c)(2).

Therefore, the Director finds that the proposed amendment at 10 CSR 40–3.160(7)(C)(5) is no less effective than the corresponding Federal regulations.

3. Operations on Prime Farmland

(a) *Coal Preparation Plants, Support Facilities, and Roads.* Missouri proposes to amend its regulations to delete language at 10 CSR 40–4.030(4)(A) that allows for the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time, where such uses affect a minimal amount of land. The language that Missouri proposes to delete is identical to Federal language at 30 CFR 823.11(a) that was suspended on February 21, 1985 insofar as it excluded from prime farmland performance standards those coal preparation plants, support facilites, and roads that are surface mining activities (50 FR 7278). Therefore, the Director finds that Missouri's proposed deletion at 10 CSR 40–4.030(4)(A) concerning applicability of prime farmland performance standards makes this portion of Missouri's program no less effective than the Federal regulations. The Director is also removing a required program amendment placed on the Missouri program at 30 CFR 925.16(m)(1) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866) that required the removal of this exemption from the Missouri program.

(b) *Water Bodies.* Missouri proposes to delete existing language at 10 CSR 40–

4.030(4)(A), and in its stead to recodify subparagraph (B) as subparagraph (A). Missouri's current regulation allows for the exemption of water bodies from prime farmland performance standards provided that (1) the water bodies have been approved as an alternative postmining land use, and (2) the water bodies are designed and constructed to minimize the loss of prime farmland. In this context, Missouri's existing regulation is substantively identical to a Federal provision at 30 CFR 823.11(b). However, in the case of *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. October 1, 1984), the court held that the Federal regulations at 30 CFR 823.11(b) provided an impermissibly broad variance from the allowed post-mining land use of prime farmlands. OSM, therefore suspended 30 CFR 823.11(b) in a February 21, 1985 **Federal Register** (50 FR 7278). OSM subsequently considered this issue and promulgated a new Federal regulation at 30 CFR 785.17(e)(5) in an October 18, 1988 **Federal Register** (50 FR 40828), that states (1) the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining, and (2) water bodies to be constructed during mining and reclamation must be located within the post-reclamation non-prime farmland portions of the permit area. This new regulation further states that the creation of any such water bodies must be approved by the regulatory authority and that the consent of all affected property owners within the permit area must be obtained.

In Missouri's proposed amendment at 10 CSR 40–4.030(4)(A), Missouri proposes to (1) delete the existing requirement that water bodies "be designed and constructed to minimize the loss of prime farmland", and (2) add a requirement that the post-mining land use of water bodies will not result in an aggregate loss of prime farmland acreage in the permit area. The effect of the proposed deletion and additions will be to still allow for the approved post-mining land use of water bodies in permit areas where prime farmland is present, but only if the existence of the water bodies will not result in an aggregate loss of prime farmland acreage. Missouri's regulation will continue to require that such water bodies be approved as an alternative post-mining land use in accordance with the applicable requirements of its program. Missouri's proposal does not specifically provide, as required at 30 CFR 785.17(e)(5), that the water bodies be located within the post-reclamation non-prime farmland portions of the permit area. While Missouri is silent on the requirement that water bodies be located within the post-reclamation non-prime farmland portions of the permit area, its proposed regulations do not allow an aggregate loss of prime farmland acreage in the permit area. Missouri's proposed regulation would therefore provide for the same intent as Federal regulations in that no exemption providing for the replacement or reduction of pre-mining prime farmland acreage in the permit area would be allowed. Missouri's proposed regulation does not require, as does the Federal regulation at 30 CFR 785.17(e)(5), that the consent of all affected property owners within the permit area be obtained when a water body is proposed in association with prime farmland reclamation. Its regulations only require at 10 CSR 40–3.130, comments by the legal or equitable owner of record of the surface. However such comments would not guarantee that the legal or equitable owner of record would give the required consent. This is less effective than Federal regulation requirements.

The Director is not approving Missouri's proposed regulation at 10 CSR 40–4.030(4)(A) to the extent that it would allow the alternative post-mining land use of water bodies in association with prime farmlands without obtaining the consent of all affected property owners within the permit area. Missouri will be required at 30 CFR 925.16(n)(1) to amend its regulation at 10 CSR 40–4.030(4), to be no less effective than the Federal requirements.

(c) *Restoration of Soil Productivity on Prime Farmland.* Missouri's existing regulations at 10 CSR 40–4.030(7)(B)6 specify the crops to be selected for determining restoration of prime farmland soil productivity. Missouri proposes to add the requirement that, where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops. This is consistent with the Federal regulation at 30 CFR 823.15(b)(6) that imposes an identical requirement. The Director finds that Missouri's proposed regulation at 10 CSR 40–4.030(7)(B)6 concerning the choice of reference crops to be no less effective than the Federal regulations. In making this change Missouri has satisfied the requirement imposed by OSM at 30 CFR 926.16(m)(3) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

4. Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources: Soil Resources Information

The State regulation at 10 CSR 40–6.040(12)(A)4 presently requires a permit applicant to provide adequate soil survey information for the permit area consisting of "(1) A map delineating different soils; (2) Soil identification; (3) Soil description; and (4) Present and potential productivity of existing soils." Missouri proposes to revise the fourth requirement of this regulation by deleting "existing", and in its stead, adding "prime farmland".

The counterpart Federal regulation at 30 CFR 779.21(a) requires an applicant to provide adequate soil survey information of the permit area consisting of (1) a map delineating different soils, (2) soil identification, (3) soil description, and (4) present and potential productivity of existing soils. However, in an August 4, 1980 **Federal Register** (45 FR 51548), this regulation was suspended to the extent that it required soil survey information for lands not qualifying as prime farmlands.

With Missouri's proposed revision, its program will still require, for both prime farmland and non-prime farmland, applicants to provide adequate soil survey information consisting of (1) a map delineating different soils, (2) soil identification, and (3) soil description. However, with respect to the requirement to provide soil survey information as to the present and potential productivity of soils, such requirement will apply only to prime farmlands.

Under the revised Federal standard, the soil survey information is required only as to prime farmland soils. Therefore the Director finds that the proposed revision to the Missouri regulation is consistent with and no less effective than the corresponding Federal regulations.

At 30 CFR 925.10(b)(4), and pursuant to the May 16, 1980 opinion of the U.S. District Court for the District of Columbia, the Director affirmatively disapproved the Missouri regulation at 10 CSR 40–6.040(12) to the extent that it required a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

The Director finds that Missouri has had the opportunity to revise this rule to reflect the court ruling and has modified its rule in part. Therefore, the affirmative disapproval is no longer necessary and is being removed.

5. Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions

At 10 CSR 40–6.070(8), Missouri proposes to remove the requirement for the regulatory authority to make certain written findings as part of the permit application approval process. The required written findings that Missouri proposes to remove include, at subparagraph J, a finding that surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations to be performed in areas adjacent to the proposed permit area; at subparagraph K, a finding that the applicant will submit the performance bond required under 10 CSR 40.7 and the regulatory program prior to the issuance of the permit; at subparagraph M, a finding that the applicant has, if applicable, satisfied the requirements for approval of long-term, intensive agricultural postmining land use, and that the proposed postmining land use of the permit area has been approved; and, at subparagraph N, a finding that all specific approvals required under 10 CSR 40–3 and 40–4 have been made.

Federal regulations at 30 CFR 773.15(c) set forth the written findings that the regulatory authority must make in order for it to approve a permit application. These regulations do not contain any requirements similar to those Missouri proposes to delete at subparagraphs (J), (K), and (N). Therefore, the Director finds that the removal of these requirements does not render the Missouri regulations inconsistent with or less effective than the Federal regulations.

The Federal regulations do, however, require at 30 CFR 773.15(c)(9), a written finding that the applicant has satisfied the requirements for approval for a long-term, intensive agricultural postmining land use in accordance with required performance standards. The Director therefore finds that Missouri's proposed removal of the written finding requirement at 10 CSR 40–6.070(8)(M) would render rthe Missouri program less effective than the corresponding Federal regulations at 30 CFR 773.15(c)(9). The Director is not approving the amendment to the extent that it deletes the written finding required by 30 CFR 773.15(c)(9) concerning approval of a long-term, intensive agricultural postmining land use. To be consistent with 30 CFR 773.15(c)(9), the Director is also requiring at 30 CFR 925.16(n)(2) a program amendment to require, for the purposes of permit application approval, a written finding that the applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive, agricultural postmining land use in accordance with the requirements of 10 CSR 40–3.130 or 40–3.300.

6. Definition

Missouri's proposed regulations at 10 CSR 40–8.010(1)(A)18 synonymously define "coal processing plant" and "coal preparation plant." Prior to Missouri's submission of the proposed definition of "coal processing plant" and "coal preparation plant", so that it would be consistent with the Federal definition of "coal preparation plant" at 30 CFR 701.5, the Director had required, at 30 CFR 925.16(m)(4), Missouri to revise its definition of "coal processing plant" and "coal preparation plant" to "include all facilities where coal is subjected to chemical or physical processing or preparation, even if it is not separating coal from its impurities." October 31, 1988 **Federal Register** (53 FR 43866). Because Missouri's proposed definition of "coal processing plant" and "coal preparation plant" fails, as mandated in the required program amendment, to include facilities where coal is subjected to chemical or physical processing or preparation, even where such facilities do not entail separating coal from its impurities, the Director finds the proposed definition to be less effective than the Federal definition at 30 CFR 701.5. Therefore, the Director is not approving the proposed revision to 10 CSR 40–8.010(1)(A)(18). The Director also finds that for the foregoing reasons, Missouri has not satisfied the required program amendment at 30 CFR 925.16(m)(4).

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. None of the agencies notified offered any substantive comments.

V. Director's Decision

Based on the above findings, with the exception of those provisions concerning regulations determined to be less effective than the Federal regulations, the Director is approving the proposed amendment submitted by Missouri on August 3, 1988.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are being amended to implement this decision. With the exception of typographical errors, this approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval. The final regulation is being made effective immediately to expedite the State program amendment process and to encourage States to bring their program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is not approving the following provisions of the proposed amendments: (1) As discussed in finding 3.b. allowing water bodies associated with prime farmland without consent of all affected property owners at 10 CSR 40–4.030(4)(A); (2) as discussed in finding 5, the deleted required written finding for a long term intensive, agricultural postmining land use at 10 CSR 40–6.070(8)(M); and (3) as discussed in finding 6, the definition of "coal processing plant" or "coal preparation plant" at 10 CSR 40–8.010(1)(A)(18).

The Director is removing the following requirements he previously placed on the Missouri program: As discussed in finding 4, the prior affirmative disapproval at 30 CFR 925.10(b)(4) of 10 CSR 40–6.040(12) regarding the requirement for soil surveys for lands other than prime farmlands; as discussed in finding 1, the prior required program amendment at 30 CFR 925.16(1)(2), concerning clarification of the term "structure" in the use of explosives; as discussed in finding 2, the prior required program amendments at 30 CFR 925.16(i), concerning the blaster training, examination, and certification program, and at § 925.16(1)(2), concerning possession or filing of the blaster certificate; as discussed in finding 3, the prior required program amendments at 30 CFR 925.16(m)(1), concerning the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads; at § 925.16(m)(2), concerning the exemption from prime farmland performance standards of water bodies; and at § 925.16(m)(3), concerning the requirement that the row crop with the greatest rooting depth be chosen as one of the reference crops.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of

an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, or other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d), of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that the approval of these amendments will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation of part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 925.10 [Amended]

2. Section 925.10 is amended by removing and reserving paragraph (b)(4).

3. Section 925.15 is amended by adding paragraph (h) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(h) With the exceptions of 10 CSR 40–4.030(4)(A) relating to water bodies placed in association with prime farmland without affected property owner consent, 10 CSR 40–6.070(8)(M) relating to a required written finding for longterm intensive agricultural postmining land use and 10 CSR 40–8.010(1)(A)(18) relating to the definitions of coal processing plant and coal preparation plant; the following provisions of the Missouri Code of State Regulations (CSR) as submitted to OSM on August 3, 1988 are approved effective December 11, 1989.

10 CSR 40–3.050(1)(C), (1)(D), (2)(F), (3)(B), (5)(B), and (5)(D), and 10 CSR 40–3.210(1)(C), (1)(D), (2)(F), (5)(B), and (5)(D)—Requirements for the Use of Explosives for Surface and Underground Operations; 10 CSR 40–3.160, Training, Examination, and Certification of Blasters; 10 CSR 40–4.030(4) and (7)(B)6—Operations on Prime Farmland; and 10 CSR 40–6.070(8)(J), (K), (L), (N) and (O)—Criteria for Permit Approval or Denial.

4. Section 925.16 is amended by adding paragraph (n) and removing and reserving paragraphs (i), (l)(2), (l)(3), (m)(1), (m)(2), and (m)(3) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(n) By March 12, 1990, amend its program at:

(1) 10 CSR 40–4.300(4)(B) to add the requirement that placement of such water bodies must receive the consent of all affected property owners within the permit area.

(2) 10 CSR 40–6.070(8)(M) to add a required written finding for permit application approval that the applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive, agricultural postmining land use as required by 30 CFR 773.15(c)(9).

[FR Doc. 89–28832 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of Texas as a modification to its permanent regulatory program (hereinafter referred to as the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment modifies the self-bonding provisions of the Texas Coal Mining Regulations (TCMR) to maintain consistency with the corresponding Federal regulations, to provide flexibility in their application, and to establish alternate eligibility criteria for governmental applicants.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Dr., Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Information pertinent to the general background on the Texas program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Texas program can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions taken concerning the Texas program and program amendments are identified at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(c), the Director notified Texas by letter dated February 18, 1987 (Administrative Record No. TX–390) of changes necessary to maintain its program in a form no less stringent than SMCRA and no less effective than the implementing Federal regulations, as

revised since February 16, 1980, the date when the Texas program was originally approved. The Director's February 18, 1987, letter required the State to amend its self-bonding regulations at TCMR 051.07.04.309(j) relating to financial ratios and other limitations including the need for the applicant's minimum period of operation; the ratio of current assets to current liabilities and the ratio of total liabilities to net worth; submission of unaudited financial statements for completed quarters in the current fiscal year; limitations on the guarantor; limitation on the ratio of the self-bond amount to the tangible net worth of the applicant; execution of an indemnity agreement by specified parties; and a provision for requiring annual updated financial information.

By letter dated July 31, 1987 (Administrative Record No. TX–393), Texas submitted proposed changes to its self-bonding regulations along with numerous other proposed revisions. In response to comments received in the State rulemaking process, Texas requested, by letter dated November 25, 1987 (Administrative No. TX–403), that the proposed self-bonding regulations be withdrawn from consideration and further requested an extension of time until March, 1988, to submit the proposed amendments. OSM approved this and subsequent requests for extensions until June 30, 1988, and August 31, 1988.

By letter dated August 29, 1988 (Administrative Record No. TX–411), Texas submitted the proposed amendments. OSM announced their receipt in the September 27, 1988, **Federal Register** (53 FR 37599), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their adequacy. The comment period ended October 27, 1988.

By letter dated November 15, 1988 (Administrative Record No. TX–427), OSM notified the State of deficiencies found in the amendment and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions, or other evidence to show that the State's proposed modifications were consistent with the Federal requirements. The deficiencies identified in the proposed self-bonding regulations recodified at TCMR 806.309(j) section 1 (D) and (H) 2, 3, 4, 5 (A) and (B), 6 (A) through (E), 7, 8, and 9 pertained to the definition of self-bond, requirements for a business entity, requirements for a governmental entity, third party guarantees, limitations, indemnity agreement, submission of current financial information, substitute bonding, and exceptions.

On March 21, 1989, Texas submitted a revised amendment (Administrative Record No. TX–445) to address these concerns, and to respond to the original letter from the Director dated February 18, 1987. Texas proposed revisions to the following self-bonding rules: definitions, TCMR 806.309(j)(1); requirements for a business entity, TCMR 806.309(j)(2); requirements for a governmental entity, TCMR 806.309(j)(3); requirements for a third-party guarantee, TCMR 806.309(j)(4); limitations, TCMR 806.309(j)(5); indemnity agreement, TCMR 806.309(j)(6); current financial information, TCMR 806.309(j)(7); substitute bonding, TCMR 806.309(j)(8); and applicability, TCMR 806.309(j)(9). Texas proposed the revisions at TCMR 806.309(j)(3) and TCMR 806.309(j)(9) to allow certain exceptions to the standard financial eligibility criteria.

OSM announced receipt of the revised proposed amendment in the April 17, 1989, **Federal Register** (54 FR 15227), and, in the same notice, reopened and extended the public comment period and provided opportunity for a public hearing on the adequacy of the amendment considering the additional materials submitted. The comment period closed on May 2, 1989. No one requested a public hearing; none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Texas Administrative Code submitted by Texas on August 24, 1988, and revised on March 21, 1989. Any provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations; although the Director may require further changes in the future as a result of Federal regulatory changes. Revisions that are not discussed either contain language the same or similar to the corresponding Federal regulations or concern nonsubstantive wording changes that do not affect the consistency of the program with the Federal regulations and Act.

1. Definitions

Texas has added definitions of "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," and "tangible net worth" at TCMR 806.309(j)(1) (A), (B), (C), (E), (F) and (H) respectively. Since the definitions are essentially the same as those in the Federal regulations at 30 CFR 800.23(a), the Director finds that the revised regulations are no less effective than the Federal regulations.

In addition, at TCMR 806.309(j)(1)(6), Texas has added a definition of "self-bond" to be consistent with the corresponding Federal definition at 30 CFR 800.5(c). However, the Texas regulation requires that the indemnity agreement be executed by a qualified applicant or by an applicant and a qualified third-party guarantor. The corresponding Federal definition at 30 CFR 800.5(c) requires that the indemnity agreement be executed by the applicant or by the applicant and any corporate guarantor. Since "any corporate guarantor" under the Federal regulations is in essence a third-party guarantor, Texas' use of the term "third-party" instead of "any corporate guarantor" is consistent with the Federal regulations.

Texas has added a definition of "governmental entity" at TCMR 806.309(j)(1)(D) to mean municipal corporation, political subdivision or public agency of the State of Texas. The proposed regulation is provided to clarify which governmental permit applicants would be allowed to apply for self-bonding under the proposed Texas regulations. The proposed definition does not conflict with the Federal self-bonding regulations since any permit applicant may apply for self-bonding under the Federal regulation. Therefore, the Texas definition is not inconsistent with Federal regulation requirements.

The Federal regulations on self-bonding include a definition of "parent guarantor" at 30 CFR 800.23(a). The proposed Texas regulations at TCMR 806.309(j)(1) do not provide for this definition since no special allowances for parent corporations are included in the proposed regulations. Applicants with parent guarantors are subject to the provisions of Texas' proposed regulations for third-party guarantors. Therefore, omission of the definition of parent guarantor in the Texas program is acceptable.

Since the revised State definitions are consistent with their Federal counterparts at 30 CFR 800.23(a), the Director finds that the State regulations proposed at TCMR 806.309(j)(1) are no less effective than the Federal regulations.

2. Requirements for a Business Entity

Texas has revised its regulations at TCMR 806.309(j)(2) to adopt self-bonding eligibility criteria and requirements for business entities that include designating an agent for service of process; being in continuous operation

for five years prior to application; meeting one or more of three financial tests, submitting audited financial statements with no adverse opinion that are supplemented by statements for unaudited quarters; and submitting any additional information as required. The Texas regulations are essentially the same as those set forth for Federal self-bond applicants at 30 CFR 800.23(b) (2) and (3) except that Texas would disqualify any applicant who was subject to bankruptcy during the five years before the application date. Under 30 CFR 730.11(b), States are allowed to adopt controls and regulations that are more stringent than their Federal counterparts. Since the Texas rule establishes more restrictive self-bonding eligibility criteria than the Federal rule, it is no less effective than the Federal regulation.

3. Requirements for a Governmental Entity

At TCMR 806.309(j)(3) Texas proposes to establish separate eligibility criteria for governmental entities applying to self-bond. Texas' proposed language is similar to 30 CFR 800.23(b) in that it requires a governmental applicant to (1) have an agent for service of process, (2) to have legal authorization to self-bond, (3) to execute an indemnity agreement, (4) to have been in operation for the five preceding years, (5) to submit audited financial statements, and (6) to meet certain financial eligibility criteria. As with the Federal financial criteria at 30 CFR 800.23(b)(3), Texas' proposed regulations at TCMR 806.309(j)(3)(e) require a State governmental applicant to meet one of three financial criteria. Like the first of these criteria at 30 CFR 800.23(b)(3)(i), TCMR 806.309(j)(3)(e)(i) allows an applicant to qualify with an A or higher bond rating. With respect to the remaining two criteria, Texas proposes to allow a governmental entity to either meet the financial requirements at 806.309 (j)(2)(ii) or (j)(2)(iii), which are equivalent to the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) or demonstrate that it meets equivalent criteria that are acceptable to the State. Texas has not defined or described these alternate criteria.

Therefore, the Director finds that Texas has not provided separate criteria that would ensure the same degree of risk protection as the financial criteria of the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). In addition, Texas would not require a governmental entity to meet a self-bond to net worth ratio consistent with that of the Federal regulations at 30 CFR 800.23(d). Since Texas has not provided alternate criteria that ensure the same degree of risk protection as the Federal regulations, the Director is not approving TCMR 806.309(j)(3), which would have established separate financial eligibility criteria for self-bonding by applicants defined as governmental entities.

4. Requirements for a Third-Party Guarantor

Texas proposes to revise its regulations at TCMR 806.309(j)(4) to allow the acceptance of a self-bond guaranteed by a third-party provided the guarantor meets all the conditions of TCMR 806.309(j)(2) as if it were the applicant and the applicant meets the conditions of TCMR 806.309(j)(2) (A), (B), and (D). The terms required for the resulting "third-party guarantee" are identical to those of the corresponding Federal rule at 30 CFR 800.23(c)(2). However, unlike the Federal regulation, the Texas rule does not explicitly state that the regulatory authority may require the applicant to submit additional financial information. Should Texas require additional information, this may be requested in accordance with the general authority granted by section 5(4) of the Texas Surface Coal Mining and Reclamation Act. Unlike 30 CFR 800.23(c)(1), Texas' proposed regulations do not establish separate, lesser requirements when the third-party guarantor is a parent corporation. Since 30 CFR 730.11(5) allows States to establish requirements more stringent than those of the Federal rules, the Director finds that omission of separate requirements for parent guarantors does not render the State rule less effective than the Federal rule.

Therefore, for the reasons discussed above, the Director finds that the proposed revisions to TCMR 806.309(j)(4) are no less effective than the corresponding Federal rule at 30 CFR 800.23(c)(2).

5. Limitations

Like the Federal regulation at 30 CFR 800.23(d), TCMR 806.309(j)(5) limits the sum of an applicant's or third-party guarantor's proposed and outstanding self-bonds to 25 percent of the applicant's or guarantor's tangible net worth in the United States. Since the State and Federal rules are substantively identical, the Director finds that proposed regulation at TCMR 806.309(j)(5) is no less effective than the Federal regulation, except as discussed in Finding 3.

6. Indemnity Agreement

The proposed rule at TCMR 806.309(j)(6) requires that an indemnity agreement be submitted if an applicant's self-bond is accepted by the regulatory authority. The proposed rule further requires that authorized officials of all parties bound to the self-bond execute the indemnity agreement; that two such authorized officials of each party sign the agreement; and that copies of the documents authorizing them to sign, and affidavits certifying that the indemnity agreement is valid under applicable Federal and State laws, be submitted. Additionally, Texas is requiring that under a bond forfeiture the applicant or third-party guarantor either complete the approved reclamation plan or pay the bond amount to the State, and that the indemnity agreement be referred to the State Attorney General to obtain a judgement when necessary under a bond forfeiture. The State's provisions are substantively identical to the corresponding Federal regulation at 30 CFR 800.23(c); therefore, the Director finds that they are no less effective than the Federal requirements.

7. Current Financial Information

Using the discretionary authority provided by 30 CFR 800.23, Texas has added provisions at TCMR 806.309(j)(7) that would require self-bonded permittees and third-party guarantors to annually update the financial information they originally submitted pursuant to TCMR 806.309(j) (2)(c) and (2)(e). Therefore, the Director finds that the proposed rule is no less effective than the Federal regulation.

8. Substitute Bonding

The proposed rule at TCMR 806.309(j)(8) requires that the State be notified and the self-bond be replaced with an alternate form of bond whenever the financial conditions of the applicant or third-party guarantor change so they are no longer eligible. This substitution along with the Commission approval of the substitute bond must be made within 90 days from the date of notification. If the substitution is not made, then the permittee must cease operations and begin reclamation. The revised State regulation is substantively identical to the corresponding Federal regulations at 30 CFR 800.23(g) and 30 CFR 800.16(e)(2). Therefore, the Director finds that it is no less effective than these Federal regulations.

9. Applicability

At TCMR 806.309(j)(9) Texas proposes to apply the revised self-bonding provisions at 806.309(j)(2)(c), (j)(3)(E) and (j)(5) only to new self-bond applicants. Existing self-bonded permittees would be allowed to retain

and increase their current self-bonds without meeting the financial eligibility criteria of the new regulations. Under Texas' proposed rules, a revision to an existing self-bond would not require the permittee to meet the revised financial criteria of TCMA 806.309(j)(2)(c), 806.309(j)(3)(E), and (j)(5).

The Federal regulations at 30 CFR 800.23 require that all self-bonded operators meet the existing eligibility criteria, and do not contain or authorize a similar grandfather clause.

Texas has not described how it would evaluate current self-bonded permittees on an on-going basis to assure their continued financial eligibility to self-bond without separate surety. Texas has not provided information regarding what criteria, if any, the current self-bonded permittees would have to continue to meet to remain qualified under Texas' self-bonding program. Since Texas has not provided financial criteria for existing self-bonded permittees to ensure the same degree of risk protection as the Federal regulations, the Director is not approviong TCMR 806.309(j)(9).

10. Recodification

Texas has recodified its self-bonding regulations from TCMR 051.07.04.309(j) to TCMR 806.309(j). Since the recodification does not alter the content or meaning of the proposed regulations, the Director finds that the revised codification system is not inconsistent with any Federal requirements. This recodification will be discussed further in a future rulemaking.

IV. Summary and Disposition of Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment." No comments were received.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies. No substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment as submitted by Texas on August 24, 1988, and revised on March 21, 1989, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations. For the reasons discussed in Finding 3, the Director is not approving TCMR 806.309(j)(3) which would have allowed special consideration for governmental entities in meeting the financial criteria and the financial limitations necessary for self-bonding. Also, the Director is not approving TCMR 806.309(j)(9) which would have allowed existing self-bonded permittees to be excused from meeting the qualifying financial criteria of the revised regulations.

The Federal regulations at 30 CFR part 943 codifying decisions concerning the Texas program are being amended to implement this decision. The Director is approving the regulations with the provision that they be fully promulgated in a form identical to that submitted to, and reviewed by, OSM and the public. Furthermore, if deemed necessary by future Federal regulatory revisions, court decisions, and OSM revaluations of the Texas program, the Director may require further revisions. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the proposed program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Texas program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Texas of only such provisions.

VI. Procedural Requirements

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding a new paragraph (d) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(d) With the exceptions of TCMR 806.309(j)(3) relating to establishment of separate financial criteria for self-bonding by government entities and TCMR 806.309(j)(9) relating to exemption of persons with existing self-bond from meeting the qualifying financial criteria of TCMR 806.309(j)(2)(C), (j)(3)(E) and (j)(5), the following amendments submitted on August 24, 1988, as modified March 21, 1989, are approved effective December 11, 1989: Revisions and recodification of the self-bonding provisions of the Texas Coal Mining Regulations at 806.309(j)(1)(A), 806.309(j)(1)(B), 806.309(j)(1)(C), 806.309(j)(1)(D), 806.309(j)(1)(E), 806.309(j)(1)(F), 806.309(j)(1)(G), 806.309(j)(1)(H), 806.309(j)(2)(A), 806.309(j)(2)(B), 806.309(j)(2)(C), 806.309(j)(2)(D), 806.309(j)(4)(A), 806.309(j)(4)(B), 806.309(j)(4)(C), 806.309(j)(5)(A),

806.309(j)(5)(B), 806.309(j)(6)(A), 806.309(j)(6)(B), 806.309(j)(6)(C), 806.309(j)(6)(D), 806.309(j)(6)(E), 806.309(j)(7) and 806.309(j)(8).

[FR Doc. 89-28830 Filed 12-8-89; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3695-8]

Standards of Performance for New Stationary Sources Supplementary Delegation of Authority to Alabama

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation.

SUMMARY: On September 11, 1989, the State of Alabama requested that EPA delegate authority for implementation and enforcement of additional categories of Standards of Performance for New Stationary Sources (NSPS). Since EPA's review of pertinent State laws, rules and regulations showed them to be adequate for the implementation and enforcement of these federal standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 30, 1989.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE, Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Mr. Richard E. Grunsnick, Chief, Air Division, Alabama Department of Environmental, 1752 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, at the EPA Region IV address listed above and phone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101 and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, NSPS.

On August 5, 1976, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the State of Alabama. On September 11, 1989, Alabama requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised (denoted by R) NSPS categories found in 40 CFR part 60:

Subpart D	Fossil Fuel-Fired Steam Generators constructed after August 17, 1971 (R)
Subpart Da	Electric Utility Steam generating Units constructed after September 18, 1978 (R)
Subpart E	Incinerators (R)
Subpart F	Portland Cement Plants (R)
Subpart G	Nitric Acid Plants (R)
Subpart H	Sulfuric Acid Plants (R)
Subpart I	Hot Mix Asphalt Facilities (R)
Subpart J	Petroleum Refineries (R)
Subpart L	Secondary Lead Smelters (R)
Subpart M	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities constructed after January 20, 1983 (R)
Subpart N	Iron and Steel Plants (R)
Subpart Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities constructed after January 20, 1983 (R)
Subpart O	Sewage Treatment Plants (R)
Subpart P	Primary Copper Smelters (R)
Subpart Q	Primary Zinc Smelters (R)
Subpart R	Primary Lead Smelters (R)
Subpart S	Primary Aluminum Reduction Plants (R)
Subpart T	Wet Process Phosphoric Acid Plants (R)
Subpart U	Superphosphoric Acid Plants (R)
Subpart V	Diammonium Phosphate Plants (R)
Subpart W	Triple Superphosphate Plants (R)
Subpart X	Granular Triple Superphosphate Storage Facilities (R)
Subpart Y	Coal Preparation Plants (R)
Subpart Z	Ferroalloy Production Facilities (R)
Subpart AA	Steel Plants: Electric arc furnaces and dust-handling equipment (R)
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (R)
Subpart BB	Kraft Pulp Mills (R)
Subpart CC	Glass Manufacturing Plants (R)
Subpart DD	Grain Elevators (R)
Subpart GG	Stationary Gas Turbines (R)
Subpart HH	Lime Manufacturing Plants (R)
Subpart KK	Lead-Acid Battery Manufacture (R)
Subpart LL	Metallic Mineral Processing Plants (R)
Subpart NN	Phosphate Rock Plants (R)
Subpart PP	Ammonium Sulfate Manufacturing (R)
Subpart UU	Asphalt Processing and Asphalt Roofing Manufacture (R)
Subpart VV	Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry (R)
Subpart XX	Bulk Gasoline Terminals (R)
Subpart LLL	Onshore Natural Gas Processing SO_2 Emissions (R)
Subpart OOO	Nonmetallic Mineral Processing Plants (R)
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants (R)
Subpart QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems
Subpart SSS	Magnetic Tape Manufacturing Industry
Subpart TTT	Industrial Surface Coating: Plastic Parts for Business Machines

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of August 5, 1976. Alabama sources subject to the requirements of subparts D, Da, E, F, G, H, I, J, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, GG, HH, KK, LL, NN, PP, UU, VV, XX, LLL, OOO, PPP, QQQ, SSS, and TTT will now be under the jurisdiction of the State of Alabama.

Action: Since review of the pertinent Alabama laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, I delegated to the State of Alabama my authority for the source categories listed above on October 30, 1989.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of section 101, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, and 7601).

Dated: December 1, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-28872 Field 12-8-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-348-F]

RIN 0938-AC31

Medicaid Program; Eligibility Determinations Based on Disability

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule specifies HCFA's policy concerning the relationship between State Medicaid eligibility determinations based on disability and disability determinations made by the Social Security Administration (SSA) under the Supplemental Security Income (SSI) program. The rule clarifies the controlling nature of SSA determinations of disability, specifies when the State Medicaid agency must make independent disability determinations, clarifies the terminology used to describe the composition of the review team and the information considered under Medicaid in making disability determinations, and extends the Medicaid time limit for making eligibility determinations based on disability from 60 days to 90 days to ensure maximum uniformity in the disability determination process used by SSA and the State Medicaid agencies. These changes will enhance the effective and efficient administration of the Medicaid program.

EFFECTIVE DATE: January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Tomlinson, 301-966-4463.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 1902(a)(10) and 1905(a) of the Social Security Act (the Act), individuals who meet certain income and resource requirements and other general eligibility requirements and who are disabled, as defined under the Act, are eligible for Medicaid. These individuals include those who are receiving cash assistance payments under the Supplemental Security Income (SSI) program, those who are eligible to receive such payments but are not receiving them, and those who, at a minimum, meet the SSI definition of disability but are not eligible for a cash assistance payment because they have income and/or resources that exceed allowable levels. The law requires that the SSI definition of disability set forth in section 1614 of the Act must be satisfied, at a minimum, in order for an individual to be eligible for Medicaid based upon disability. The SSI definition governs eligibility, except in those States that elect to use a more restrictive definition than used under SSI (although no more restrictive than under the State's 1972 approved Medicaid plan) under the provisions of section 1902(f) of the Act. The Medicaid regulations implementing the requirement that the SSI disability definition generally must be used are located in 42 CFR 435.540. In implementing this requirement, HCFA requires that the related SSI criteria, standards, presumptions, and factors required to reach SSI decisions on disability also apply to Medicaid eligibility determinations based on disability.

This document concerns only the definition of disability, which is one factor in eligibility. It does not concern any other factors of Medicaid eligibility.

Most State Medicaid agencies have agreements with SSA under the authority of section 1634 of the Act to determine Medicaid eligibility for individuals who are recipients of SSI and federally administered State supplements. The Federal regulations that govern these agreements are located in 42 CFR 435.909 and 20 CFR 416.2101 through 416.2176.

In cases in which a State has a section 1634 agreement with SSA, and the individual files an application only with SSA for SSI, the State Medicaid agency is not required to make a Medicaid disability determination for the period starting on the effective filing date of the SSI application. This is because an application for SSI is also an application for Medicaid in such States. An applicant is required to wait until SSA makes an SSI eligibility determination. An SSA determination is to provide SSI benefits confers Medicaid eligibility in section 1634 States (if certain statutory Medicaid requirements are met) and usually confers Medicaid eligibility in other States where a separate Medicaid application is required. (An SSA determination includes disability determinations made by State agencies on behalf of SSA.) There may be instances in section 1634 States where an applicant for SSI does not intend to apply for Medicaid and limits the application or the applicant may not be aware of the link between SSI and Medicaid. In these circumstances, the individual may apply separately for Medicaid and a State may not refuse to accept the application. As discussed in detail later in this preamble, the basic rule is that any SSA decision as to disability remains controlling as to the same set of facts, unless it is changed by SSA. However, if an individual files an application with the State Medicaid agency alleging that he or she is eligible for Medicaid on the basis of disability, the State agency responsible for Medicaid determinations must make a disability determination on certain circumstances.

The circumstances under which the State Medicaid agency is required to make an independent determination of disability are as follows:

1. An individual applies for Mediaid as a noncash recipient and has not applied to SSA for SSI cash benefits, or an individual applies for Medicaid and has applied for SSI benefits and is found ineligible for SSI for a reason other than disability.

2. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State Medicaid agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's applications for Medicaid. (Section 1902(a)(8) of the Act provides that Medicaid must be furnished to eligible individuals with reasonable promptness. Regulations implementing this requirement, § 435.911, currently specify that the State Medicaid agency must make an eligibility determination based on disability within 60 days from the date a written application is submitted to the agency (the time limit is expanded in this final rule to 90 days).)

3. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria for determining disability than SSI or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

4. The individual applies for Medicaid as a noncash recipient and alleges a disabling condition that is different from or in addition to that considered by SSA.

5. The individual applies for Medicaid as a noncash recipient more than 12

months after SSA last made a final determination that the individual was not disabled, and alleges that his or her condition has changed or deteriorated since that final determination and the individual has not reapplied for SSI on the basis of these allegations. (Any allegation of a deterioration of the condition for which SSA made a determination that is filed less than 12 months after the most recent final SSI determination must be submitted to SSA for reconsideration or reopening.)

On December 14, 1987 (52 FR 47414), we published in the **Federal Register** a proposed rule to incorporate in the Medicaid regulations HCFA's policy on the controlling nature of SSA disability determinations, the effect of new and material evidence on a prior SSA determination and other related matters. The proposed rule was issued (1) in response to numerous questions that we had received on the effects of SSI eligibility determinations based on disability on Medicaid eligibility disability determinations and (2) to clarify policy to help prevent or curtail disruptive court challenges to the policy's validity. We received correspondence from 26 respondents on the proposed rule. The specific public comments on the proposed rule and our responses are presented later in this document.

A discussion of the specific regulation changes that were proposed in the December 14, 1987 document, and that are being adopted in this final rule follows.

Effects of SSA Disability Determinations

The statute is clear that the SSI disability definition under section 1614 of the Act must be used in determining disability under Medicaid, except in those States that elect to apply a more restrictive definition, as noted above. It is clear also that, in States that have section 1634 agreements, if SSA awards SSI benefits to an individual on the basis of disability, the State also must provide Medicaid (if the individual agrees to assign any rights to third party payments, agrees to provide third party information, and does not have a Medicaid qualifying trust) and is bound by the SSA determination of disability.

Under section 1902(a)(10) of the Act, States have the option of providing Medicaid coverage to persons who are eligible for payment under specified cash assistance programs (including the SSI program), but are not receiving such payments, and to persons who are ineligible for cash payments under one of these programs solely as a result of excess income or resources (that is, they would be eligible for such payments if they met income and resource requirements). If a cash assistance program (in this case, SSI) determines or previously has determined that an individual is ineligible for cash assistance because he or she does not satisfy the categorical requirements for eligibility (in this case, disability), the individual, by definition, is not eligible for such cash assistance, and would not be eligible if income and resource standards were satisfied. Such an individual accordingly is not eligible for Medicaid under these State options. Therefore, a finding by SSA that an individual is not disabled controls for purposes of any applications for Medicaid based upon an allegation of disability for essentially the same condition and time periods.

Our basic rule is that any SSA determination as to an individual claimed disability remains controlling as to that claimed condition until it is changed by SSA. In the event a different conclusion was reached by the State Medicaid agency prior to the individual's application for SSI or because the SSA determination was not made promptly as required under 42 CFR 435.911, the State Medicaid agency's determination is superseded by the SSA determination.

It is only in those cases in which SSA has not decided disability (e.g., individuals who simply choose not to apply for SSI, or who do not apply because they are not financially eligible for SSI or who are found ineligible for SSI payments for a reason other than disability) that States must apply to SSI eligibility criteria and determine whether an applicant would be eligible for SSI if he or she applied, and were financially eligible. When the SSI program has determined that an individual is not disabled, that determination settles the question of whether the individual "would be eligible for SSI." The option of providing Medicaid to individuals who are eligible for SSI but have not applied for cash payments, or who would be eligible for SSI if they met financial requirements, was not intended to grant individuals a second chance at Medicaid after they have been found not disabled by the SSI program.

As SSA disability decision has a binding prospective effect on Medicaid eligibility. If SSA makes a determination of disability that is different from one already made by a State Medicaid agency, the SSI decision controls Medicaid eligibility based upon disability under one of the State options just described, and Federal financial participation (FFP) in Medicaid expenditures for these individuals accordingly is limited in accordance with §§ 435.1001–1003. In case in which SSA denies disability after the State agency has made a determination of eligibility, FFP is available only for the period of eligibility in which the State made a reasonable application of SSI policies, definitions, standards, and criteria until SSA reached the different determination. At that point, FFP is available only as provided in § 435.1003. In other words, States that have made a good faith effort to apply the SSA rules on disability (or more restrictive rules under section 1902(f)) will not be penalized because they made a determination that ultimately proves to be contrary to the SSA determination. For purposes of FFP and quality control guidelines, the date an SSA disability determination becomes binding on a State Medicaid agency is the date the State receives State data exchange information from SSA. The binding prospective effect of an SSI determination is subject to the administrative period permitted by 42 CFR 435.1003. State that do not take necessary action, including notice to the applicant, concerning such a determination within the period allowed under § 435.1003 will be subject to quality control errors.

We have adopted as final the proposed regulations to amend § 435.541 to incorporate the conditions under which the State Medicaid agency must make independent determinations of disability, and the effect of any SSA determinations on Medicaid eligibility.

Court Challenges

Medicaid eligibility under the State's option of providing Medicaid to individuals who would be eligible for SSI but have not applied for, or are not financially eligible for, SSI generally involves individuals who would not have received a disability determination from SSA. For this reason, the existing Medicaid regulations do not expressly address the situation in which SSA has determined that an applicant for SSI is not disabled, and that individual subsequently applies to the State for Medicaid based on disability. This has not only caused confusion, but, we believe, gave rise to the decision by certain Medicaid applicants in the State of Rhode Island to bring a Federal court challenge to HCFA's policy that SSI disability determinations control for purposes of State Medicaid applications based upon disability (*Rousseau* v. *Bordeleau* v. *Heckler*, 624 F. Supp. 355 (D.R.I. 1985)). The plaintiffs in *Rousseau* alleged that even if SSI has found an individual not disabled, and thus by

definition not eligible under the SSI categorical standard, States should still make an "independent" determination as to whether the individual "would be" eligible for SSI if he or she applies for Medicaid based upon disability.

In ruling for the plaintiffs, in a decision we believe to be erroneous, the District Court in *Rousseau* held that the existing regulations governing Medicaid applications to States based upon disability support the view that States should in such cases make independent disability determinations (624 F. Supp. at 360). We do not agree with this decision for two reasons. First, the decision in the *Rousseau* case was in part the result of a lack of clarity in the regulations which these final regulations will correct. Once these final regulations are in effect, the regulations relied upon by the court in support of its decision will have been changed and a reevaluation of the *Rousseau* decision would be in order. Secondly, we believe the statutory analysis in the *Rousseau* decision is weak because the court failed to distinguish between determining eligibility and determining disability. It is only the determination of disability that is affected by this regulation. The court incorrectly associated the authority to make the determination of "Medicaid eligibility" which the State did indeed contract out to SSA, with the authority to make determinations as to whether an applicant for SSI benefits is disabled under the SSI disability standard. This latter determination is solely the SSI program's to make in the case of an individual applying for SSD. Once SSI has made a disability determination, this determination is only a component of the ultimate determination of Medicaid eligibility, along with such other components as financial eligibility, eligibility groups contained in the State's Medicaid plan, and State residency. (Of course, a negative SSI determination on disability will end the inquiry.) The court's conclusion that Rhode Island has plenary authority to make disability determinations, and that it somehow "contracted" this authority away to SSA in the case of SSI applicants, necessarily assumes that in the absence of a section 1634 agreement, the State could make independent disability determinations even in the case of individuals who have actually been found not disabled by SSI. Rather than possessing plenary authority to determine whether individuals are disabled under the SSI disability standard, we believe that States that do not apply more restrictive disability criteria than SSI under section 1902(f) have this authority only in those cases in which there is no disability decision for purposes of the SSI program, i.e., in the case of applicants who have not applied (certain optional categorically needy) or are not financially eligible (certain optional categorically needy or medically needy) for actual SSI benefits. Finally, the argument contained in the *Rousseau* case is that favorable disability determinations should be binding on the States but not unfavorable ones.

By clearly spelling out HCFA's policy in the Medicaid regulations, we believe that such a ruling can be avoided in the future. Because the *Rousseau* decision relied in part on the court's misreading of the statute, unless and until the court's ruling is vacated or overruled, the policy set out in these regulations does not apply in the State of Rhode Island. Rhode Island and HCFA are subject to a court order requiring the State to make independent disability determinations even if SSA has found an applicant not disabled.

Another recent court decision in New Jersey supports the policy set forth in these regulations. In the case of *Fratone et. al.* v. *Department of Public Welfare et. al.* (D.N.J. Nos. 87–2569, 87–2570, February 8, 1988), the District Court upheld HCFA's policy that SSA disability determinations control prospectively for purposes of Medicaid eligibility under one of the State options and expressly rejected the court's analysis in *Rousseau*. The *Fratone* court found HCFA's policy, as implemented by New Jersey, resulted in uniform State treatment of Federal disability findings, and saw no reason why Congress would wish findings of disability to be binding on the States and findings of no disability to be meaningless for the States.

The *Fratone* court held that the Social Security Act does not require State Medicaid agencies to make their own disability determinations where SSA determined within the year preceding the application (or thereafter) that an individual was not disabled, and that neither the statute nor the regulations establish State authority to make independent disability determinations when SSA has spoken.

The court rejected the *Rousseau* court's view that the provisions of § 435.541(d) provided a basis for inferring State authority to make independent disability determinations, and found that § 435.541(d) is nothing more than a reiteration of section 1902(a)(10)(A)(i)(I) of the Act. This provision requires States to provide Medicaid to applicants who are already receiving SSI on the basis of disability. If SSA has already determined disability in favor of the applicant, the statute itself directs that a State may not deny Medicaid on the grounds of disability. It is only logical then that the procedures for State disability hearings should be inoperative in those cases.

The court concluded that there was no support in the statute, the regulations, or New Jersey's section 1634 agreement for the proposition that the State agency had an inherent authority to decide the appellant's disability claim on its merits once SSA found the individual not disabled.

Consideration of New and Material Evidence

Since SSA determinations are controlling, HCFA has determined that new and material evidence or allegations by individuals regarding previous SSA determinations of disability must be presented to SSA for reconsideration in accordance with SSA's rules. SSA is in the best position to reconsider or reopen its prior determinations. SSA has an ongoing process for making disability determinations and has a high level of expertise in this area. It is not in the interest of program efficiency or in the best interests of recipients for States to perform duplicate tasks which might arrive at different or conflicting determinations of eligibility. To do so would be wasteful of Federal tax dollars and would subject recipients unnecessarily to application of two separate processes.

Under SSA's rules, the individual may request a reconsideration within 60 days of receipt of the notice denying disability eligibility under the SSI program. If the individual does not appeal the determination within the stated time, he may still request reopening of the determination within 1 year for any reason and within 2 years for good cause. Good cause is defined as new and material evidence, clerical error, or error on the fact of the evidence (20 CFR 416.1489). If the individual's request is not made within the stated times, the time may be extended if the individual establishes good cause for the late filing of an appeal request. However, HCFA believes that a separate State Medicaid agency decision is warranted where the individual applies for Medicaid as a noncash recipient and alleges changed circumstances from those present at the time of the SSI determination which would make it unreasonable to consider the SSI determination controlling. This would occur, for example, if the applicant alleges (1) a new and different

disabling condition, or (2) a deterioration of his or her condition since SSA made its original determination, occurring at least 12 months after the date of the most recent final SSA determination, and the applicant has not applied for SSI with respect to these allegations. SSA thus has never made a determination with respect to these conditions.

We have adopted as final the proposed regulations under § 435.541 that specify that States must refer to SSA all applicants that allege new or material evidence (as opposed to a subsequent change in their condition) that affect previous SSA determinations.

Time Limits for Making Medicaid Disability Determinations

As stated earlier, under existing regulations a State is required to make eligibility determinations based on disability within 60 days of the date the individual files a written application for Medicaid with the State. In States that have section 1634 agreements with SSA, this time limit causes SSA and the State Medicaid agency to duplicate the eligibility determination process when an individual applies separately for Medicaid and SSI. Frequently, SSA does not reach its decision by the end of the 60-day period following application for Medicaid. Therefore, in order to comply with the Medicaid time limit, the State Medicaid agency is forced to make an independent disability determination. In some cases, the Medicaid agency may make a determination that later is contrary to that made by SSA. Under HCFA's existing policy, if a prior and different conclusion was reached earlier by the State Medicaid agency, the State agency's determination is superseded by the SSI determination. However, FFP is available to the State for Medicaid expenditures for the period during which the State made a reasonable application of SSI policies, definitions, standards and criteria. This system wastes both State and Federal funds. We have adopted as final the proposed Medicaid regulations that recognize the typical length of time required by SSA to process most disability determinations. These regulations extend the Medicaid time standard for making eligibility determinations based on disability from 60 days to 90 days from the date of application (§ 435.911).

Most disability claims are processed by SSA within 90 days. While some claims will remain undecided by SSA on the 90th day, extending the time limit for Medicaid State disability determinations from 60 to 90 days will substantially reduce the number of applications for Medicaid based on disability for which the State must make a determination without the benefit of an SSA disability determination. For example, in the month of April 1987, 50.3 percent of SSI claims were processed by the 60th day, and 73.4 percent of the claims were processed by the 90th day. Thus, the number of Medicaid applications for which a State Medicaid agency determination would have to be made without benefit of an SSA determination on the issue of disability will be reduced by nearly one half of the number of claims that the State would have had to process given the 60-day limit. This change will substantially remove the risk that a determination of eligibility based on disability by the State will be reversed later because of an SSA determination of ineligibility based on disability. This also will save Medicaid program funds expended for services for individuals who, in fact, are not eligible. We do not find that this change will adversely affect recipients because Medicaid eligibility is effective with the date of application and retroactive Medicaid eligibility for the period of up to 3 months before the month of application under § 435.914 must be provided if certain conditions are met.

Composition of Disability Review Teams

The Medicaid regulations under § 435.541 address the composition of the State disability review teams for making disability decisions, and the information that must be obtained and reviewed by the team. The State disability review team must, under those regulations, include a physician and a social worker "qualified by professional training and experience." The agency must obtain, for review by the team, a medical report that includes a diagnosis that is based on medical evidence and a "social history." SSI regulations (20 CFR 416.1015) provide that the disability determination must be made by a medical or psychological consultant, and a disability examiner who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments, and, as necessary, to determine the capacities of the individual to perform substantial gainful activity. SSI regulations (20 CFR part 416, subpart I) do not employ the term "social history." However, SSA does consider, in addition to the required medical reports and medical assessment, information from other sources such as public and private social welfare agencies, observations by nonmedical sources, and other practitioners that will help the agency to understand how an individual's impairment affects his or her ability to work. Although the Medicaid regulations thus call for essentially the same process as that used in the SSI program, we believe that the regulations for both programs should employ the same terminology. This will help ensure a more uniform application of the definition of disability under section 1614 of the Act.

Questions have been raised as to whether the differences between the terminology used to describe the composition of the review team and the information considered under Medicaid and the terminology used by SSA reflect any substantive difference in the process used to determine disability under the two programs. Although we do not believe that the differences in the specific terminology used to describe the requirements of the Medicaid and SSI review teams reflect any substantive differences in procedures used, we recognize that these terminology differences have been, and likely may continue to be, a source of confusion. Thus, we have adopted as final the proposed revised § 435.541 that requires that the review team be composed of individuals with the same level of skill as required by SSA under 20 CFR part 416, subpart J. This revision also requires States to use the same type of medical evidence and other nonmedical information and the methodology for obtaining and evaluating this evidence and information that is used for making disability determinations by SSA under 20 CFR part 416, subpart I. These changes serve to achieve the goal of maximum uniformity in the disability determination process.

Application of Changes to Territories

Except in one instance, we have not changed the regulations governing the categorical and application requirements for Medicaid eligibility in Guam, Puerto Rico, and the Virgin Islands under 42 CFR part 436. These Territories provide Medicaid to disabled individuals on the basis of receipt of or eligibility for assistance under the program of aid to the aged, blind, and disabled under title XVI in existence before the SSI program was created. They also are not subject to the provisions for optional use of more restrictive eligibility requirements than SSI under section 1902(f) of the Act. Persons who do not reside in, or who leave, the 50 States, the District of Columbia, or the Northern Mariana Islands are not eligible for SSI payments. Thus anyone who lives in or who moves to Guam, Puerto Rico, or the

Virgin Islands is not eligible to receive SSI payments even if that person would be eligible if he or she lived in one of the 50 States, the District of Columbia, or the Northern Mariana Islands. The precedence of an SSI determination of disability in these Territories therefore is not an issue. In addition, because the Territories continue by law to use disability standards under title XVI that have been superseded by SSI in the States and are not eligible to participate in SSI, we have decided that it is not reasonable to require the Territories to follow the review team, information, and evidence requirements applied to SSA in making SSI disability determinations. However, we have adopted as final the proposed revised § 436.541 concerning the composition of the medical review teams and the information considered in making a determination of disability to make the existing requirements in the Medicaid regulations minimum requirements. If the Territories use a more rigorous set of review team, information, and evidence requirements in determining disability under their programs of aid to the aged, blind, and disabled, they also are required to follow those requirements for Medicaid disability determinations.

We believe, however, that the Territories should have the same time standard for making determinations on applications based on disability as the States. Therefore, we are maintaining in the regulations under § 436.901 application of the requirements governing the States relating to the time limit for acting on applications. As discussed earlier, we have changed the time standard from 60 to 90 days. Thus, both States and Territories are allowed 90 days to complete determinations based on disability. Because the Territories generally must use off-island facilities for consultative examinations, the additional time permits the Territories to conduct more thorough determinations of eligibility. This change also retains HCFA's policy that all States and Territories meet the same timeliness standards for action on applications.

Public Comments and Departmental Responses

Comment: One commenter alleged that under the proposed rules Medicaid applicants would have to wait up to 2 years before Medicaid could be granted.

Response: We believe the commenter has inaccurately interpreted the proposed rules. States are required by the regulations to make determinations within 90 days of the Medicaid application. If SSA has made an initial or final determination within that time, the State must follow the SSA disability determination in making its Medicaid eligibility determination. If SSA has not made an initial or final disability determination in sufficient time for the State to comply with the 90-day requirement, the State must make its own disability determination within the 90-day limit. FFP is available until SSA acts on the SSI application. The State then has the time set forth in existing regulations at § 435.1003 to determine Medicaid eligibility on some other basis if the SSA determination denies disability eligibility.

Comment: One commenter suggested that States should pend disability applications for 90 days and then have 60 days to make a decision. This could result in a period of 150 days before a decision is made on a Medicaid application.

Response: We believe a 150-day period in which to make a decision does not meet the promptness standard in section 1902(a)(8) of the Act. Section 1902(a)(8) requires assistance be furnished with reasonable promptness. We believe that a total of 90 days is a reasonable limit. In part, we have based this limit on the experience of SSA in administering the social security disability program. In 1986, the most recent year for which we have data, the average processing time from application to initial decision was 78 days. Therefore, we believe it is reasonable to expect States to be able to process disability claims within the 90-day period. We also extended the time from 60 to 90 days to encourage and provide some additional time for greater coordination and cooperation between the States and SSA. This coordination and cooperation, we believe, should be achievable because in many States the State Disability Determination Service processes both SSA disability applications and Medicaid disability determinations. It also helps prevent the uncertainty and disruption in an applicant's life that is the result of two approximately concurrent but different decisions, one of which must yield to the other.

We have made a conforming change to § 435.541(c)(3) to ensure that Medicaid disability determinations are made timely even when SSA has not made its disability determination within the time period established for the Medicaid determinations. SSA is not bound by time periods such as those used in the Medicaid program. Even though the time remaining in the 90-day time limit after a State concludes SSA will not render a determination may be short, we expect that States will take steps to do any preliminary work without waiting for SSA to act (for example, securing evidence from the applicant).

Comment: One commenter suggested that Medicaid disability determinations that are later invalidated by an SSA disability determination should not be overturned unless the determination is reviewed under the Disability Benefits Reform Act of 1984 (DEBRA). The commenter reasoned that the invalidation was a termination of disability and that DEBRA applies.

Response: DEBRA does not apply in this situation because the two determinations (the earlier State determination and the later SSA determination) are both initial determinations employing the same facts, time period, and allegations of disability. Further, the medical improvement standard in DEBRA found in section 1614(a)(4) of the Act applies to a recipient of disability-based benefits under title XVI. Therefore, the medical improvement standard in DEBRA only applies to someone actually receiving SSI payments, who SSA determines is no longer disabled. SSA decisions to terminate disability benefits previously approved by SSA occur either when SSA receives evidence that the beneficiary is no longer disabled within the meaning of the Act (for example, the beneficiary is engaged in substantial gainful activity) or a scheduled medical reexamination reveals that the individual is no longer disabled within the meaning of the Act. In these cases the medical improvement standard in DEBRA is applied in deciding whether the beneficiary is still disabled. The proposed rule does not address the issue of terminating disability because an individual is no longer disabled but rather the issue of whether and when SSA disability determinations must be followed by States in Medicaid eligibility decisions.

Comment: One commenter suggested that the requirement that applicants be referred to SSA during the 12 months after SSA made a determination denying disability then alleging a worsening of their disability, or new evidence to support an allowance, unfairly penalizes the applicant.

Response: We do not believe the applicant is penalized by the requirement. Since both Medicaid and SSI utilize the same definition of disability (unless the State elects the option to use a more restrictive definition), if the new evidence or worsened condition meets this definition, it can be to the applicant's advantage to go back to SSA since the

applicant may end up not only receiving Medicaid but SSI as well. Furthermore, the appropriate appeal forum to reconsider a determination made by SSA is SSA.

Comment: One commenter asked for an explanation of the eligibility procedures when an individual, who within 12 months of the SSA decision, became more disabled than when he or she was when SSA denied disability, but that person's income or resources have increased above the SSI thresholds.

Response: During the first 12 months after SSA has made a decision denying disability, an applicant may seek reconsideration or reopening of that decision from SSA. Whether SSA will reopen its disability determination depends on a number of factors; for example, whether the applicant submits new evidence, or whether the applicant alleges a new onset date. Ordinarily, if an applicant's income or resources are clearly above the SSI limits, SSA will deny an application on the financial basis without making a determination concerning the applicant's disability claim. Although this situation would occur only rarely, we are revising the regulation to provide an additional exception to cover cases in which a deterioration or change in condition is alleged less than 12 months after the SSA determination denying disability, SSA refuses to consider whether the new allegations would change the disability determination, and the individual no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

We also have clarified § 435.541 with respect to the period of time the State must use an existing SSA disability determination, and may not make a disability determination independent of the SSA determination. States must use the most recent SSA disability determination for a period of 12 months after the determination is made.

Comment: Several commenters suggested that SSA's relatively high reversal rate at the administrative law judge (ALJ) hearing level argues against HCFA's position as to the controlling nature of SSA disability determinations.

Response: We disagree with the commenters for two reasons. Most importantly, as explained in the preamble of the proposed rule, we believe that the applicable statutory provisions compel the interpretation that SSA disability determinations control where there is an actual or potential conflict between the SSA determination and a State disability determination. Second, reliance on the reversal rate at the ALJ level is misleading since available figures indicate that less than 20 percent of the total number of denied claims are reversed as a result of the introduction of new evidence substantiating the applicant's claim. Reversal also may occur where a claimant's condition deteriorates subsequent to the initial or reconsidered determination.

Comment: One commenter stated that § 435.541(c)(4)(ii) of the proposed regulation text seems inconsistent with the background material in the preamble to the NPRM regarding the description of circumstances under which the State Medicaid agency is required to make an independent determination of disability. The commenter read the regulatory provision as requiring that only the individual's condition must have changed or deteriorated "or" the period of disability is at least 12 months after the most recent final SSA determination before an initial determination is made. The preamble requires that both circumstances exist.

Response: Our intent for the regulatory provision as stated in the preamble is correct—that is, the individual needs to allege both a change or deterioration in his or her condition and a new period of disability. We have corrected the text of the final regulation to require that both circumstances exist.

Comment: One commenter suggested that the proposed regulations would prohibit an individual from applying for Medicaid if, within the previous 12 months, SSA had denied disability. In this context, some commenters also stated that they believed the regulations would deprive the States of the right to make eligibility determinations.

Response: The regulations do not prohibit an individual from applying for Medicaid for circumstances other than disability once a determination of SSA disability is denied. An individual may apply for Medicaid on grounds other than disability, in which case the disability determination by SSA would have no effect on eligibility. The regulation only concerns the binding effect of SSA disability determinations. The disability determination is only one part of an eligibility determination. The preamble to these final regulations and the preamble to the proposed rule explain why we require that the State use the SSA disability decision when determining the eligibility of an applicant for Medicaid as disabled. We do not consider this policy clarification to preempt in any way State authority to determine eligibility.

Comment: One commenter expressed concern that the regulation would not be cost effective because of duplication of effort if States must make disability determinations before SSA has acted in order to meet the Medicaid time limit. The commenter believes this would be especially true of States that do not have section 1634 agreements, of which there are 19. The commenter also observed that if a State does not cover the optional groups of persons who would be eligible for SSI if they applied (§ 435.210), that is, those persons not receiving SSI and not living in an institution, hence not eligible for Medicaid under the State plan, these regulations would cause duplication of effort.

Response: While duplication of effort and the costs of a duplicate decision would certainly be avoided if a State waits until SSA acts on an SSI disability application, the statutory requirement in section 1902(a)(8) of the Act mandates that a State act promptly to determine eligibility. If the State waited beyond the time limit established in the regulations at § 435.911, it would violate this statutory requirement.

With regard to the comment applicable to States without optional categorical needy programs, the State would not have to make a disability determination because the State only covers persons receiving SSI. Thus the State could deny the application without addressing the issue of disability. If the individual is found by SSA to be disabled and eligible for SSI retroactive to a month covered by the Medicaid application, the State could reopen its determination denying eligibility. In States with section 1634 agreements, reopening would be necessary since an SSI application also is an application for Medicaid. Under Medicaid the first month for which an SSI recipient could have received a check is considered the first month of receipt, even if the money is not actually received until months later. Consequently, we consider any duplication of effort to be minimal.

Comment: Several commenters expressed opposition to the proposed regulations because the regulations do not follow the *Rousseau* decision (explained earlier) and do not implement an explicit statutory provision. The commenters believe that the *Rousseau* decision correctly interprets the statute.

Response: Under the Medicaid statute, the determination of eligibility for medical assistance must be made by the State or local agency (42 U.S.C. 1396a(a)(5)). As we have explained earlier, the *Rousseau* court focused on an exception to this general principle which exists in the case of States like Rhode Island that have agreements with

SSA under which SSA performs the function of determining Medicaid eligibility in the case of individuals it finds eligible for SSI. These agreements are authorized by section 1634 of the Act and are expressly limited under the regulations to individuals found eligible for SSI, i.e., "mandatory categorically needy" individuals. As Rhode Island is required to provide Medicaid to State residents who are receiving SSI, Medicaid eligibility under its agreement with the State generally involves only SSA's notification to the State of those applicants who are eligible for SSI.

It is the authority to perform this function on behalf of the State, involving individuals who, by law, must be Medicaid eligible if they are State residents, that Rhode Island delegated to SSA under its section 1634 agreement. The court construed this agreement as "contracting away the powers to make disability determinations to the federal government" and concluded that this means "that the State has that authority in the first place" (624 F. Supp. at 359).

We have already discussed earlier in this preamble under the section on "Court Challenges" the reasons why we do not agree with the commenters that the decision correctly interprets the statute. Also, as discussed earlier in this preamble, in a recent New Jersey court decision in *Fratone* v. *Department of Public Welfare*, the court supported our position and affirmed the State's denial of applications for Medicaid-only benefits when those denials were based on SSA determinations that the applicants were not disabled.

Comment: One commenter suggested that the proposed regulations would deny applicants a meaningful hearing of the Medicaid denial because the State is required to adhere to an SSA denial of disability.

Response: We do not accept this analysis. The effect on Medicaid appeals of the change we proposed to § 435.541 should be minimal. When SSA makes a disability determination that is binding on a State, the applicant is not denied a meaningful hearing on the basis for the Medicaid denial because the SSA denial of disability upon which the Medicaid denial is based is appealable through SSA's appeals process. It is not appropriate to challenge an SSA determination through the Medicaid appeals process because although the State has adopted the SSA determination the State did not make the determination. In this instance § 435.541, as revised, would prevent an appeal through the State agency as set forth in § 431.220. However, when the State makes an independent determination of disability, that is, where a binding SSA disability determination does not exist, a denial of disability is appealable through the State agency. The change in § 435.541 does not, however, affect in any way the appealability of other determinations by State agencies.

Comment: A number of comments concerned issues on how the regulations would be implemented and operational issues arising from implementation.

Response: We will address operating issues in instructions provided to States.

Additional Change

In addition to the changes made in response to comments, and discussed above, we have revised the wording of § 435.541(a) to avoid the inaccurate impression that the provisions in § 435.541(b) are limited in their application to States with section 1634 agreements. We believe that this revision has no substantive effect, and merely clarifies the intent set forth in the preamble to the NPRM.

Regulatory Analysis

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any regulations that are likely to meet the criteria for a "major rule." A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets. In addition, we prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, neither States not individuals are considered small entities.

These regulations will impact on Medicaid disability determinations in a significant way. State Medicaid agencies are currently compelled to determine Medicaid disability eligibility within 60 days of application for Medicaid. SSI, which is not so obligated, may decide contrary to the State's ruling after the 60-day State limit. We estimate that, by extending the time limit imposed on the State Medicaid agencies to 90 days, duplication of effort by section 1634 States and SSI in the determination of disability will be eliminated for a number of applications. As a result, the Medicaid program will save funds expended for benefits to individuals determined not to be eligible because a Medicaid agency's positive eligibility determination is overruled by SSA in the 60- to 90-day window.

We estimate that total annual Medicaid savings will be about $5 million, shared approximately equally by the Federal Government and the States. Therefore, we have determined, and the Secretary certifies, that these regulations are not a major rule and will not have a significant economic impact on a substantial number of small entities. Neither a regulatory impact analysis nor an initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

These regulations do not impose any new information collection or reporting requirements that are subject to approval of the Executive Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

For the reasons set out in the preamble, 42 CFR chapter IV, subchapter C, is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.541 is revised to read as follows:

§ 435.541 Determinations of disability.

(a) *Determinations made by SSA.* The following rules and those under paragraph (b) of this section apply where an individual has applied for Medicaid on the basis of disability.

(1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of

disability when the only application is filed with SSA.

(2) The agency may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in § 435.911 on the same issues presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility, as provided for under § 435.909.

(b) *Effect of SSA determinations.* (1) Except in the circumstances specified in paragraph (c)(3) of this section—

(i) An SSA disability determination is binding on an agency until the determination is changed by SSA.

(ii) If the SSA determination is changed, the new determination is also binding on the agency.

(2) The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination, except in cases specified in paragraph (c)(4) of this section.

(c) *Determinations made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist:

(1) The individual applies for Medicaid as a non-cash recipient and has not applied to SSA for SSI cash benefits, whether or not a State has a section 1634 agreement with SSA; or an individual applies for Medicaid and has applied to SSA for SSI benefits and is found ineligible for SSI for a reason other than disability.

(2) The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within 90 days from the date of the individual's application for Medicaid.

(3) The individual applies to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria than SSI for determining Medicaid eligibility under its section 1902(f) option or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination in time for the State to comply with the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

(4) The individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA, and—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; or

(ii) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements of the Act, and has not applied to SSA for a determination with respect to these allegations.

(iii) Alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Act, and—

(A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; and/or

(B) He or she no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

(d) *Basis for determinations.* The agency must make a determination of disability as provided in paragraph (c) of this section—

(1) On the basis of the evidence required under paragraph (e) of this section; and

(2) In accordance with the requirements for evaluating that evidence under the SSI program specified in 20 CFR 416.901 through 416.998.

(e) *Medical and nonmedical evidence.* The agency must obtain a medical report and other nonmedical evidence for individuals applying for Medicaid on the basis of disability. The medical report and nonmedical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR part 416, subpart I.

(f) *Disability review teams*—(1) *Function.* A review team must review the medical report and other evidence required under paragraph (e) of this section and determine on behalf of the agency whether the individual's condition meets the definition of disability.

(2) *Composition.* The review team must be composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 CFR part 416, subpart J.

(3) *Periodic reexaminations.* The review team must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this part, using the principles set forth in 20 CFR 416.989 and 416.990. If a State uses the same definition of disability as SSA, as provided for under § 435.540, and a recipient is Medicaid eligible because he or she receives SSI, this paragraph (f)(3) does not apply. The reexamination will be conducted by SSA.

3. In § 435.911, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

§ 435.911 Timely determination of eligibility.

(a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed—

(1) Ninety days for applicants who apply for Medicaid on the basis of disability; and

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as set forth below:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.541 is revised to read as follows:

§ 436.541 Determination of disability.

(a) *Basic requirements.* (1) At a minimum, the agency must use the review team, information, and evidence requirements specified in paragraph (b) through (d) of this section in making a determination of disability.

(2) If the requirements or determining disability under the State's APTD or AABD program are more restrictive than the minimum requirements specified in this section, the agency must use the requirements applied under the APTD or AABD program.

(b) The agency must obtain a medical report and a social history for individuals applying for Medicaid on the basis of disability. The medical report must include a diagnosis based on medical evidence. The social history

must contain enough information to enable the agency to determine disability.

(c) A physician and social worker, qualified by professional training and experience, must review the medical report and social history and determine on behalf of the agency whether the individual meets the definition of disability. The physician must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this subchapter.

(d) In subsequently determining disability, the physician and social worker must review reexamination reports and the social history and determine whether the individual continues to meet the definition. Disability is considered to continue until this determination is made.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance)

Dated: April 21, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: November 6, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-28843 Filed 12-8-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-222; RM-6259]

Radio Broadcasting Services; Mexico Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Robert G. Kerrigan, substitutes Channel 257C2 for Channel 257A at Mexico Beach, Florida, and modifies the license for Station WMQA(FM) to specify operation on the higher powered channel. Channel 257C2 can be allotted to Mexico Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 kilometers (1.6 miles) east to avoid a short spacing to Station WKSM(FM), Channel 258C2, Fort Walton Beach, Florida. The coordinates for this allotment are North Latitude 29-56-32 and West Longitude 85-23-31. With this action, this proceeding is terminated.

EFFECTIVE DATES: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-222, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under the entry for Mexico Beach, Florida, by removing Channel 257A and adding Channel 257C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28751 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-321; RM-6270]

Radio Broadcasting Services; Volcano, HA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Timothy D. Martz allots Channel 299A to Volcano, Hawaii, as the community's first FM service. Channel 299A can be allotted to Volcano, Hawaii, in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 19-26-00 and 155-15-42. With this action, this proceeding is terminated.

DATES: Effective January 19, 1990; The window period for filing applications will open on January 22, 1990, and close on February 21, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-321, adopted November 20, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Hawaii by adding Volcano, Channel 299A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-89-28752 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Finding of Conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Governments of Venezuela, the Republic of Panama, the Republic of Vanuatu, and the Republic of Ecuador have submitted information which demonstrates that these nations and the tuna purse seine fishing vessels under their control are in conformance with United States marine mammal regulations. As a result of this finding, yellowfin tuna from Venezuela, Panama, Vanuatu, and Ecuador may continue to be imported into the United States through 1990.

DATES: This finding is effective on December 11, 1989, and remains in effect

until December 31, 1990 unless superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196. The documents which form the basis for these findings are available for inspection at the Southwest Regional Office during regular business hours.

SUPPLEMENTARY INFORMATION: On March 7, 1989 (54 FR 9438), the NMFS promulgated an interim rule within 50 CFR 216.24 to implement the Marine Mammal Protection Act (MMPA) Amendments of 1988, concerning the importation of yellowfin tuna caught by purse seining in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States during 1990, any nation which has purse seine vessels greater than 400 tons carrying capacity operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals in the tuna fishery comparable in most respects to that of the United States.

The 1988 Annual Reports, submitted in July 1989 for the purpose of renewing findings for 1990, contain the following:

A. Publications relating to their marine mammal regulations:

Government of Venezuela

1. Wild Animals Protection Act. Official Gazette #29289. August 11, 1970.

2. Act approving the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Official Gazatte #2053 (Extraordinary). June 29, 1977.

3. Act approving the International Convention on Whaling-1946. Official Gazette #3327 (Extraordinary). January 18, 1984.

4. Joint Resolution MAC/DGSPA #459 and MARNR/DM #66. Regulates the purse-seine fishery inside and outside national waters by Venezuelan-flag vessels. Official Gazette #34083. September 30, 1988.

Republic of Panama

1. Decree No. 63. Official Gazette #21156. October 14, 1988.

Republic of Vanuatu

1. The Maritime Act No. 8 of 1981 and Maritime Act No. 36 of 1982.

2. The Maritime (Protection of Mammals) Regulation No. 33 of 1988. October 12, 1988.

Republic of Ecuador

1. Resolution No. 348. Official Register #30. September 21, 1988.

B. List of each nation's purse seine vessels greater than 400 tons which fished in the ETP, and their status from 1986 through 1989.

C. Descriptions of each nation's regulatory and enforcement programs governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna.

D. Fleet performance data for 1986, 1987 and 1988 for each nation, obtained from the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC.

The Assistant Administrator, after consulation with the Department of State, finds that the Governments of Venezuela, the Republic of Panama, the Republic of Vanuatu, and the Republic of Ecuador have met all of the current requirements for importing yellowfin tuna during 1990 into the United States, and may continue to do so through December 31, 1990, subject to the terms and conditions of the Marine Mammal Importation Regulations (50 CFR 216.24(e)).

In making these findings, it is not necessary to compare the 1988 mortality rates of these nations to that of the U.S. fleet because, as clearly provided for by the 1988 MMPA Amendments (Pub. L. 100–711), such comparability tests are to be applied starting with 1989 fishing year data not 1988 data. Although the Interim Final Rule Governing The Importation Of Tuna Taken In Association With Marine Mammals (54 FR 9438, March 7, 1989) was intended to make this clear, it did not. Therefore, a soon-to-be published Final Rule superseding the March 7, 1989 rule will make the necessary technical change to reflect the intent of the MMPA amendments concerning the need to compare 1988 mortality rate data.

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 89–28747 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO-89-A1; FV-90-100]

Kiwifruit Grown in California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed amendments to marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider amending the marketing agreement and order (hereinafter referred to as the order) which cover kiwifruit grown in California. The proposed amendments were submitted by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order. The proposed changes would authorize conducting committee nominations by mail, change the term of office from 2 years to 1 year for the three additional grower members from the districts with the greatest production, and authorize a late payment charge on delinquent handler assessments. These changes were recommended by the committee to improve the administration, operations and functioning of the marketing order program.

DATES: The hearing will begin at 9:00 a.m. on January 19, 1990.

ADDRESSES: The hearing will be held in the Processed Products Branch Training Room, 2202 Monterey Street, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from Robert J. Curry, California Marketing Field Office, USDA, AMS, 1755 North Gateway, Suite B, Fresno, California 93727, telephone (209) 456-2262, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

Except for Proposal No. 4 on conforming changes which is submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, the proposals have been submitted by the Kiwifruit Administrative Committee (committee). The committee works with the Department in administering the marketing agreement and order. These proposals have been widely discussed within the California kiwifruit industry but have not received the approval of the Secretary of Agriculture.

The public hearing is for the purposes of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order and to any appropriate modifications thereof; (2) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (3) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and have any prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel, except Regional Attorneys; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 920

California, Kiwifruit, Marketing agreements and orders.

Authority: Secs. 1-19, 48 Stat. 31, as amended: 7 U.S.C. 601-674.

Testimony is invited on the following proposals or appropriate modifications of such proposals:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Proposal No. 1

Revise § 920.21 to read as follows:

Section 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be two years from the date of their selection and until their successors are selected; except that the term of office of the three additional members and their alternates selected from the three districts with the highest production in the prior fiscal period shall be one year. Except as otherwise provided in this part, the terms of office shall begin on August 1 and end on the last day of July. Members and alternates may serve up to three consecutive two-year terms or six consecutive one-year terms on the committee or a combination thereof not to exceed six years.

Proposal No. 2

Revise § 920.22 to read as follows:

Section 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the

committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

Proposal No. 3

Amend § 920.41 by revising the last sentence of paragraph (a) to read as follows:

Section 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time established by the Secretary upon recommendation of the committee, the assessment may be subject to an interest or late payment charge, or both, as established by the Secretary upon recommendation of the committee.

* * * * *

Proposal No. 4

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing.

Dated: December 6, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-28861 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 967

[FV-90-106PR]

Celery Grown in Florida; Increase in Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase expenditures under Marketing Order No. 967 for the 1988-89 and 1989-90 fiscal years established under the celery marketing order. The increases are necessary to meet previously unanticipated expenses. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 10, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, FV, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administation Branch, FV, AMS USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing order issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida who are subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administation (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery producers and handlers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Florida Celery Committee (Committee) and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of celery. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee conducted a telephone vote on August 24, 1989, to confirm the motion which was made at the May 24, 1989, meeting to increase expenses and unanimously recommended increasing expenses for the 1988-89 fiscal year by $32,000 bringing the total budget from $126,000 to $158,000. A final rule on the expenditures and assessment rate for the 1988-89 fiscal year was published in the August 5, 1988, issue of the **Federal Register** (53 FR 29443). The reason for the increase in expenses involves an over-expenditure of two line items in the budget which are travel by Committee personnel and promotion, merchandising and public relations. These two over-expenditures account for the total over-expenditures of $32,000. Reserve funds would be used to cover the additional expenses.

In addition, the Committee held a telephone conference on October 30, 1989, and unanimously recommended increasing expenses for the 1989-90 fiscal year by $44,000 bringing the total budget from $127,000 to $171,000. A final rule on the expenditures and assessment rate for the 1989-90 fiscal year was published in the August 25, 1989, issue of the **Federal Register** (54 FR 35316). The reason for the increase in expenses involves an over-expenditure of several line items which include: $15,000 in administative fees; $1,200 in travel expenses by Committee members; $2,000 in Committee staff travel expenses; $200 in telephone miscellaneous expenses; and $400 in the contingency reserve. These items account for the total over-expenditure of $44,000. It is not necessary to propose an increase in the assessment rate for the 1989-90 fiscal year as adequate reserve funds are available to cover the additional expenses.

There are no additional costs on handlers as a result of this proposed action. Therefore, the Administrator of the AMS had determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 967 is proposed to be amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 967.324 (Amended)

2. Section 967.324 is amended by changing "$126,000 to $158,000."

§ 967.325 (Amended)

3. Section 967.325 is amended by changing "$127,000 to $171,000."

Dated: December 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28862 Filed 12–8–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 979

[Docket No. FV–90–110]

Melons Grown in South Texas; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate under Marketing Order 979 for the 1989–90 fiscal period. Authorization of this budget would allow the South Texas Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATES: Comments must be received by December 21, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of Texas melons may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Melon Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of melons. Because that rate would be applied to actual shipments, it must be established at a rate which would produce sufficient income to pay the committee's expenses.

The committee met on November 7, 1989, and unanimously recommended a 1989–90 budget of $327,244. This total exceeds last year's budget of $308,438 by $18,806. Administrative expenses, including salaries, travel and office expenses, have been increased $12,860. In addition, the amount budgeted for production research has been increased $10,000 to $114,398, and promotion expenses have been reduced $4,054 to $115,946.

The committee also unanimously recommended an assessment rate of 4 cents per carton, the same as last year. The recommended assessment rate, when applied to anticipated shipments of 7,650,000 cartons, would yield $306,000 in assessment revenue. This amount, when added to $21,244 from the reserve, would be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in October, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred in a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.212 is added to read as follows:

§ 979.212 Expenses and assessment rate.

Expenses of $327,244 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of melons is established for the fiscal period ending September 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: December 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28863 Filed 12–8–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWP–26]

Proposed Revision of Los Alamitos, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revise the description of Los Alamitos AAF Control Zone, CA. The intended effect is to eliminate the control zone cutout for Meadowlark Airport. Meadowlark Airport is now permanently closed. This action will extend the Los Alamitos Control Zone to encompass the radius area over Meadowlark Airport.

DATES: Comments must be received on or before January 15, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 89–AWP–26, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWP–26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the description of the Los Alamitos Control Zone. The Meadowlark Airport zone was excluded from the Los Alamitos Control Zone. This airport has been permanently closed. This area will now be included in the revised description of Los Alamitos. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Los Alamitos AAF, CAA [Revised]

Within a 5-mile radius of Los Alamitos Armed Forces Reserve Center (lat. 33°47'30" N., long. 118°02'50" W). Excluding that portion within the Long Beach, CA, control zone. This control zone is effective from 0700 to 2200 hours local time daily, or during specific times and dates established in advance by a Notice to Airmen which will be continuously published in the "Airport/Facility Directory."

Issued in Los Angeles, California, on November 22, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-28800 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AGL-17]

Proposed Transition Area Establishment; Casselton, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish the Casselton, ND, transition area to accommodate a new VOR/DME Runway 31 Standard Instrument Approach Procedure (SIAP) to Casselton Regional Airport, Casselton, ND. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 1, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Asst. Chief, Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Henry D. French, Air Traffic Division, Systems Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-17". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-030, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Casselton, ND. The transition area is being established to accommodate a new VOR/DME Runway 31 SIAP to Casselton Regional Airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Casselton, ND [New]

That airspace extending upward from 700 feet above the surface within a 5.5-mile

radius of the Casselton Regional Airport (lat. 46°51'15" N., long. 97°12'31" W.); and within 1.75 miles each side of the 110° bearing from the airport, extending from the 5.5-mile radius area to 6.5 miles southeast of the airport, excluding that portion which overlies the Fargo, ND, transition area.

Issued in Des Plaines, Illinois, on November 28, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-28798 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ANM-016]

Alteration of Medford Control Zone, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Medford, Oregon, Control Zone by increasing the size of controlled airspace for the establishment of an instrument approach to at the Medford-Jackson County Airport. The additional airspace would segregate aircraft operating under Visual Flight Rules (VFR) conditions from aircraft operating under Instrument Flight Rules (IFR) procedures. The area would be depicted on aeronautical charts to provide a reference for the aviation public.

DATES: Comments must be received on or before February 2, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 89-ANM-016, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jerry Parker, ANM-538, Federal Aviation Administration, Docket No. 89-ANM-016, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-016". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the Notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 A, which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.163 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for establishment of a VHF omnidirectional range/distance measuring equipment (VOR/DME) approach to the Medford-Jackson County Airport, Oregon.

The additional airspace would segregate aircraft operating under Visual Flight Rules (VFR) conditions from aircraft operating under Instrument Flight Rules (IFR) procedures. The area would be depicted on appropriate aeronautical charts, thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Section 71.163 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.163 [Amended]

2. Section 71.163 is amended as follows:

Medford Control Zone, Medford, Oregon [Amended]

On the sixth line after "VORTAC" add—"and within 5 miles each side of the Medford VORTAC 164 radial extending from the 5 mile radius zone to 26 miles south of the Medford-Jackson County Airport."

Issued in Seattle, Washington, on November 24, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 89-28799 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ACE-35]

Proposed Alteration of Control Zone—Knob Noster Whiteman Air Force Base, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the control zone description for Whiteman Air Force Base, Knob Noster, Missouri. The Whiteman/Windsor VOR has been removed from service. Accordingly, reference to the VOR will be deleted from the control zone description.

DATES: Comments must be received on or before January 11, 1990.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to alter the control zone description at Knob Noster Whiteman Air Force Base, Missouri. This action proposes to delete reference in the control zone description to the Whiteman/Windsor VOR since this naviational aid has been removed from service.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Knob Noster Whiteman AFB, MO [Revised]

Within a 5-mile radius of Whiteman AFB, Knob Noster, Missouri, (lat. 38°43'50" N., long. 93°33'00" W.); within 2 miles each side of the Whiteman TACAN 185 radial, extending from 5-mile radius to 7 miles south of the TACAN. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on November 27, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 89-28797 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule; Power Output Claims For Amplifiers Utilized In Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Regulatory Flexibility Review, request for comments; extension of deadline for submission of comments.

SUMMARY: The Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act and its Plan for Periodic Review of Commission Rules, 46 FR 35118 (1981), is soliciting comments and data on whether the Rule on power output claims for amplifiers utilized in home entertainment products has had a significant economic impact on a substantial number of small entities and if it has, whether the Rule should be amended to minimize such impact. In the **Federal Register** Notice announcing this proceeding, the deadline for public comments was November 25, 1989 (54 FR 43435, October 25, 1989). Due to the request for additional time within which to prepare comments, the Commission has extended the deadline for public comments to January 26, 1990.

DATES: All comments and data should be received by the Commission no later than January 26, 1990.

ADDRESSES: Comments should be sent to Secretary, Federal Trade Commission, Washington, DC 20580. Comments should be identified as "RFA—Amplifier Rule" comments.

FOR FURTHER INFORMATION CONTACT: Robert Eliot Easton, Sr., Esq., Special Assistant—Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

List of Subjects in 16 CFR Part 432

Amplifier rule, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–28834 Filed 12–8–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AE15

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend existing procedures and requirements regarding accreditation of cretain individuals as representatives of claimants for benefits administered by VA. These amendments are designed to improve VA's ability to assure the availability of high-quality representation for claimants.

DATES: Comments must be received on or before January 10, 1990. Comments will be available for public inspection until January 22, 1990. It is proposed to make these amendments effective 30 days after publication of the final rule.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Secretary of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays), until January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Acting Deputy Assistant General Counsel (022A) 202–233–2440.

SUPPLEMENTARY INFORMATION: VA proposes two amendments to existing regulations in 38 CFR part 14. One would authorize accreditation as claim representatives of individuals working at least 1,000 hours annually for organizations recognized by VA to represent veterans' benefit claimants. The second would establish criteria for the accreditation of county veterans' service officers as claim representatives based on recommendation and supervision by State organizations recognized by VA to represent veterans' benefit claimants.

Regulations governing accreditation of service organization personnel as representatives of veteran's benefit claimants presently require that such individuals be either full-time employees or members of an organization recognized by VA to represent veterans in the benefit-claim process. The rationale for the requirement of full-time employment has been that the representative should be sufficiently dependent upon remuneration from the recognized organization as to assure accountability in the performance of responsibilities involved in the claim process. However, VA believes less-than-full-time employment does not connote lack of accountability when the representative works a considerable number of hours annually for the recognized organization and is thus significantly dependent upon the organization as a source of livelihood.

The Employment Retirement Income Security Act of 1974 (ERISA) includes a provision, 29 U.S.C. 1052(a)(3)(A), essentially requiring that employees working at least 1,000 hours per year be afforded the right to participate in employee retirement plans, thereby recognizing the significant economic nexus between such employees and their employer. Further, the part-time status of an employee does not insulate the employer from responsibility for the employee's failure to perform properly the responsibilities incident to his or her position. Part-time employment of the nature contemplated certainly suggests a greater degree of supervision and control than does mere membership in an organization, which currently is sufficient to permit accreditation. For these reasons, VA has tentatively concluded the proposed amendment to authorize accreditation of employees of recognized organizations working at least 1,000 hours annually will not undermine the purpose of VA regulations regarding recognition of organizations and representatives to assure that claimants for veterans' benefits received qualified, responsible representation in the preparation, presentation, and prosecution of claims.

The second proposed amendment would set out criteria under which a State organization which has been recognized by VA to represent claimants could seek accreditation of county veterans' service officers as representatives, even though such officers are not employed by the State organization. VA has for years recognized some such service officers under the theory that they are so closely associated with the State as to be considered State employees. However, no criteria currently exist for determining whether such service officers should qualify for accreditation on this basis. The proposed amendment would establish criteria in the regulation regarding adequate training, testing, and monitoring of county service officers to assure quality representation of veterans' benefit claimants. Further, the proposed regulations would provide recognized State organizations with clear and uniform standards to apply in determining whether to certify county service officers as qualified to represent claimants.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory-flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments affect only internal VA procedures and policies and would not have any adverse economic impact on or significantly increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance number for those regulations.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Organization and functions (Government agencies), Veterans.

Approved: November 13, 1989.
Edward J. Derwinski,
Secretary.

PART 14—[AMENDED]

In 38 CFR Part 14, LEGAL SERVICES, GENERAL COUNSEL, in § 14.629, paragraph (a)(2) is proposed to be revised and an authority citation is proposed to be added, to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys.

* * * * *

(a) * * *

(2) Is either a member in good standing or a paid employee of such organization working for it no less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veterans' service officer recommended by a recognized State organization, meets the following criteria:

(i) Has successfully completed a course of training and an examination which have been approved by a VA District Counsel within the State; and

(ii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

(Authority: 38 U.S.C. 210 (b)(1) and (c)(1) and 3402)

* * * * *

[FR Doc. 89-28759 Filed 12-8-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3695-3; TN-039]

Approval and Promulgation of Implementation Plans; Tennessee; Harman Automotive, Incorporated Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to disapprove a State Implementation Plan (SIP) revision submitted by the State of Tennessee. The SIP revision, if approved, would provide for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County) to achieve compliance with the applicable volatile organic compound (VOC) regulation by averaging or "bubbling" of emissions from Sources 09 and 27 within the facility. The proposed bubble does not meet the requirements that any emissions trade must be surplus and quantifiable and is therefore not consistent with current Agency policy.

The public is invited to submit written comments on this proposed action.

DATES: Comments must be received by January 10, 1990.

ADDRESSES: Written comments should be addressed to Kay T. Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365;

State of Tennessee, Tennessee Department of Health and Environment, Air Pollution Control Division, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The Harman facility operates a mirror frame coating line (Source 09) and a mask painting department (Source 27). Application of paints within this facility is governed by the Tennessee reasonably available control technology (RACT) regulation 1200-3-18-.21, which limits volatile organic compound (VOC) emissions for the two sources to 3.5 pounds VOC per gallon of coating, excluding water.

On July 30, 1988, the State of Tennessee, through the Tennessee Department of Health and Environment, officially submitted a source-specific SIP revision prepared by the State for a certificate of alternate control for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County). Hardeman County is an unclassified area for ozone. The SIP revision would allow Harman to average or "bubble" VOC emissions from Source 09 (mirror coating line) and Source 27 (mask paint department) in lieu of achieving compliance with the surface coating of miscellaneous metal parts and products RACT regulation on a line-by-line basis. Specifically, the proposed bubble provided for demonstration of compliance by: (1) Limiting the daily sum of emissions from Sources 09 and 27 to the product of the following five factors: (a) 19.33 pounds per thousand mirror frames; (b) thousand mirror frames coated in Source 09 for day; (c) ratio of mirror frames coated in Source 09 for day to metal mirror frames coated in Source 09 for day; (d) ratio of average film thickness for day to 1.5 mils; and (e) ratio of an area coated per mirror frame for day to 0.37 square foot; (2) using electrostatic coating application eqipment in Source 09; and (3) limiting emissions from Source 27 to 25 pounds per day.

The certificate of alternate control for Herman was submitted to EPA on July 30, 1986, prior to publication of the December 4, 1986, Emission Trading Policy Statement (ETPS). Despite this fact, the submittal cannot be treated as a pending bubble under the ETPS because it did not meet the requirements of the April 7, 1982, version of the trading policy. Specifically, the submittal did not meet the following criteria:

1. All reductions must be surplus. To demonstrate that the reduction is surplus, a baseline emission level must first be established. Historical emissions data was submitted for source 09 but not for source 27, and, therefore there was not sufficient information to determine whether or not the reduction was surplus. Furthermore, the emissions information which was submitted was based on 1980 production data. Although the 1982 policy did not specifically define the baseline period, it is the Region's opinion that a more recent time period should be used unless a demonstration is made that the submitted data was more representative. No such demonstration has been made by the State.

2. Alternate emission limits must be enforceable. The compliance instrument must specify applicable restrictions on hours of operation, production rates or input rates; enforceable test methods for determining compliance; and necessary recordkeeping or reporting requirements. The certificate of alternate control did not specify test methods or recordkeeping requirements.

3. All reductions must be quantifiable. To quantify the emission reduction, emissions must be calculated both before and after the reduction. Since no emissions data was submitted for source 27, the required calculations cannot be made. Therefore, the bubble did not meet the requirement to be quantifiable.

Once it was established that the bubble did not meet the requirements to be considered as a pending bubble, the submittal was evaluated against the December 4, 1986, ETPS. The State was adivsed on August 3, 1987, that the proposed SIP revision was deficient in

that it did not meet the following criteria required by the ETPS for the bubble to be approvable:

1. The action must be surplus. To determine whether or not the reduction is surplus, the state must first establish the appropriate level of baseline emissions. Baseline emissions for any source are the product of three factors: emission rate, capacity utilization, and hours of operation. Net baseline emissions are the sum of the individual baseline emissions of all sources involved in the bubble. In attainment or unclassified areas, the lower of actual or allowable values must generally be used for each of these baseline values for each source involved in the trade. For bubbles, a source's actual emissions equal its average historical emissions, in tons per year, for the two-year period preceding the source's application to trade. The State submitted 1980 emissions data for Source 09 and no data for Source 27. Furthermore, the two-year period preceding the source's application to trade is May 1984 through April 1986. No information was submitted to support the use of another time period. Therefore, the bubble does not meet the 1986 ETPS requirement that the trade be surplus.

2. Alternate emission limits must be enforceable. The April 7, 1982, and the December 6, 1986, trading policies both require that appropriate test methods and adequate recordkeeping requirements be included in the submittal in order for the bubble to be enforceable. Therefore, since the submittal did not meet the enforceability requirements of the 1982 policy, it also did not meet those of the 1986 ETPS.

3. The emission reduction must be quantifiable. The requirements that the reduction be quantifiable are the same for both the 1982 and 1986 trading policies. Therefore, the bubble does not meet the requirement that the reduction be quantifiable as specified in the December 4, 1986, ETPS for the same reasons as those cited previously for the 1982 policy.

This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following documents before submitting the revision for approval by USEPA: (1) Appendix A of the Post–1987 ozone policy, titled "Discrepancies and Inconsistencies Found in Current SIP's, (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist-Enforceability" which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Because there is no additional technical information which needs to be addressed, no technical support document has been prepared.

Proposed Action

The Harman Automotive, Incorporated bubble is not consistent with EPA's ETPS. Therefore, EPA is today proposing to disapprove this revision to the Tennessee SIP.

The public is invited to participate in this rulemaking by submitting written comments on the proposed action.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities because it applies to only one source, Harman Automotive, Incorporated. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 FR 52

Air Pollution Control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. Sections 7401–7642

Dated: April 14, 1988.

Greer C. Tidwell,

Regional Administrator.

Editorial Note: This document was received at the office of the Federal Register December 6, 1989.

[FR Doc. 89–28875 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

(40 CFR Part 81)

[FRL—3693–8]

Designation of Areas For Air Quality Planning Purposes; Attainment Status Designations; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In the July 22, 1986, Federal Register (51 FR 26272), USEPA proposed to approve Indiana's request to redesignate Saint Joseph (St. Joseph) and Elkhart Counties, from nonattainment to attainment for ozone, if and when the State certified that it had completed implementation of its State Implementation Plan (SIP). In this supplemental proposed rulemaking notice, USEPA is proposing to disapprove Indiana's request to redesignate St. Joseph and Elkhart Counties, based on the most recent 3 years (1986 through 1988) of ozone air quality data for this area. This supplemental proposed disapproval notice supersedes with respect to ambient air data the proposed approval notice in the July 22, 1986, Federal Register.

The intent of this supplemental proposed notice is to discuss the most recent ambient air quality data from this area and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change.

DATES: Comments on this redesignation request and on the supplemental proposed rulemaking must be received by February 9, 1990.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26 , Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of USEPA has promulgated the national ambient air quality standards (NAAQS) attainment status for all areas within each State. For Indiana, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations are subject to revision whenever sufficient air quality

data become available to warrant a redesignation and other requirements are met (see 51 FR 26272, July 22, 1986). For areas designated nonattainment for ozone, a revised ozone State Implementation Plan (SIP) was required which satisfies the requirements of Section 110(a) and Part D of the CAA, and which provides for attainment and maintenance of the ozone NAAQS.

St. Joseph and Elkhart Counties, Indiana (the South Bend area) were designated nonattainment for ozone. On January 30, 1985, and January 23, 1986, Indiana submitted RACT I and II volatile organic compounds (VOC) emission control regulations [1] for St. Joseph and Elkhart Counties, the last element in its ozone plan for these counties. Prior to this submittal on December 22, 1983, Indiana requested that USEPA redesignate St. Joseph and Elkhart Counties from nonattainment to attainment for ozone.

On July 22, 1986 (51 FR 26272), USEPA proposed to approve Indiana's request to redesignate St. Joseph and Elkhart Counties to attainment for ozone, if and when the State certified that it had completed implementation of its SIP. This implementation includes: RACT I and II VOC regulations, new source review requirements, and Transportation Control Measures. To date, Indiana has not certified compliance with the SIP. Today, USEPA is proposing to disapprove the State's request to redesignate St. Joseph and Elkhart Counties based upon the most recent 3 years (1986 through 1988) of ozone air quality data available. This supplemental proposed disapproval notice supersedes with respect to ambient air data the July 22, 1986, proposed approval notice.

The Ozone NAAQS

The NAAQS for ozone are violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm. (See "Guideline for the Interpretation of Ozone Air Quality Standard," EPA–450/4–79–003, which has been included in the record for this rulemaking action.) The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (due to invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days (EPA–450/4–79–003).

Criteria for Ozone Redesignations

Specific criteria for ozone redesignation reviews are given in the following USEPA documents and memoranda:

1. Memorandum entitled, "Requirement for VOC RACT Regulation for all Oxidant Nonattainment Areas," from David G. Hawkins, Assistant Administrator for Air, Noise, and Radiation, to Regional Administrators, Regions I–X, August 4, 1978.
2. Letter from Assistant Administrator David G. Hawkins to George Ferreri, Director of the Maryland Bureau of Air Quality and Noise Control, March 7, 1979.
3. "Guideline for the Interpretation of Ozone Air Quality Standards," (EPA–450/4–79–003).
4. Memorandum entitled, "Criteria for Ozone Resignations under Section 107," from Richard Rhoads to Air and Hazardous Materials Division Directors, December 7, 1979.
5. Memorandum entitled, "Section 107 Designation Policy Summary," from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Regional Air Directors, April 21, 1983.
6. Memorandum entitled, "Rulemaking Notices on Redesignations," from G.T. Helms, Chief Control Programs Operations Branch, to Chief, Air Branch, Regions I–X, June 2, 1986.
7. Memorandum entitled, "Ozone Redesignation Policy," from Gerald A. Emison, Director, Office of Air Quality Planning and Standards to Regional Air Directors, April 6, 1987, which includes a Letter from David Kee, Director, Region V, Air and Radiation Division, to Robert P. Miller, Chief, Air Quality Division, Michigan Department of Natural Resources, March 16, 1987.
8. "Policy for Ozone Redesignation—Summary," author: G.T. Helms, Chief, Control Programs Operations Branch (undated).
9. Memorandum entitled, "Criteria for Ozone Redesignations Under Section 107," from, Rhoads to Director, Air and Hazardous Materials Division Directors, December 1979.

Proposed Redesignation

Since the July 22, 1986, proposal, USEPA has become aware of a monitored violation of the ozone NAAQS in St. Joseph and Elkhart Counties. (St. Joseph and Elkhart Counties together form the South Bend ozone nonattainment area.) The current (1986 through 1988) ozone air quality data for the South Bend area show that a violation of the ozone NAAQS was recorded by the ozone monitor located at Children's Hospital in St. Joseph County. This monitor recorded three exceedances (0.137, 0.135, and 0.130 ppm) of the one-hour ozone standard (0.12 ppm) in 1988. These are daily peak one-hour ozone concentrations. An analysis of the peak air quality levels and number of missing days during the 1986 through 1988 ozone seasons (April through October) shows an average expected exceedance rate of 1.07 per year, which constitutes a violation of the NAAQS. This NAAQS violation was addressed in a July 27, 1989, National press release of areas currently violating the ozone NAAQS.

USEPA based the July 22, 1986, proposal on 4 years of data instead of 3 years because, in cases where ambient ozone levels were constant or decreasing over time, it was appropriate to consider as many years of air quality data as possible to average out the effects of variation in meteorology. As discussed above, however, recent data shows that 1988 ozone levels actually *increased* in the South Bend area, as well as in a number of other areas in the United States, indicating violations of the ozone NAAQS. USEPA's evaluation of these areas was based on the most recent 3 years of air quality data, which is consistent with USEPA's redesignation policy memorandum of June 2, 1986, and USEPA's approach for evaluating and publicly reporting areas that violate the ozone standard. Therefore, USEPA believes it is no longer appropriate in this case to consider the most recent 4 years of ozone data in calculating expected exceedance, and instead believes that the most recent 3 years of air quality data (1986–1988) should be considered for the South Bend area.

Conclusion

USEPA has determined that a violation of the ozone NAAQS has been monitored at a site in St. Joseph County. Therefore, USEPA is proposing to disapprove the State of Indiana's request to redesignate St. Joseph and Elkhart Counties to attainment for ozone because the South Bend area does not meet all the requirements for redesignation.

All interested persons are invited to submit written comments on USEPA's proposed denial of the redesignation request and the ambient data. Written

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[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

RACT I regulations are regulations covering sources which were contained in USEPA's first set of control technique guidelines (CTGs), i.e., those which were published before January 1, 1978. These CTGs are referred to as "Group I CTGs" and pertain to "Group I Sources." Similarly, RACT II regulations are regulations covering sources which were contained in USEPA's second set of CTGs, published between January 1, 1978, and January 1, 1979. These CTGs are referred to as "Group II CTGs" and pertain to "Group II Sources."

comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation request.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that disapproving this redesignation request for St. Joseph and Elkhart Counties, Indiana will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements on anyone.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 30, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–28873 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 85

[AMS–FRL–3695–7]

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On December 23, 1988, EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** that would establish an alternative loaded-mode test procedure for inclusion in the Emission Control System Performance Warranty Short Tests of 40 CFR part 85, subpart W. The Agency is reopening the comment period for this rulemaking primarily to allow interested parties an opportunity to review and comment on two new studies of the alternative loaded-mode test procedure.

DATES: Comments on the rulemaking action should be submitted to the Agency at the address given below on or before January 10, 1990.

ADDRESSES: Materials relevant to the proposed loaded-test revision are contained in Public Docket No. A–88–32. The docket is located at the Environmental Protection Agency, Air Docket, Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Interested parties may inspect the docket from 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Richard S. Wilcox, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4200.

SUPPLEMENTARY INFORMATION: The Loaded Test is one of several short test procedures, which EPA has promulgated, that are intended to be used by state and local agencies to measure vehicular emissions as part of their inspection and maintenance (I/M) programs. Owners of 1981 and newer model year light-duty motor vehicles and light-duty trucks that fail an approved short test, may be eligible for certain emissions performance warranty coverage. The test procedures and performance warranty regulations are contained in 40 CFR part 85, subparts V and W.

On January 3, 1989, the State of Arizona began loaded-mode testing with dynamometer equipment and procedures that result in a lower speed and lighter load on the vehicle than specified in the current Loaded Test requirement. Just prior to that date, EPA proposed to revise the loaded-mode portion of the Loaded Test to accommodate Arizona's dynamometers (December 23, 1988, 53 FR 51956).

On February 28, 1989, EPA extended the comment period on the proposed rulemaking until March 31, 1989, in response to a request from the Motor Vehicle Manufacturers Association (MVMA) (54 FR 8358). The industry group asked for additional time to more fully evaluate the effect of the proposal on vehicle manufacturers' warranty obligations. This evaluation was to include an analysis of test data that were becoming available from the new loaded-mode testing program in Arizona.

Several developments have occurred since the comment period was extended that are relevant to the proposed rulemaking action. First, the State of Arizona continued to make other small changes to the Loaded Test procedure during the extended comment period. These changes made it impossible to fully analyze the program's test data by the close of the new comment period. Second, three new studies of the test data have now been completed and placed in the public docket for review. Two of these were conducted by EPA.[1,2] The third was prepared by Energy and Environmental Analysis, Inc. for the Arizona Department of Environmental Quality.[3] Finally, MVMA recently requested that the rulemaking's comment period be reopened for 60 days to allow interested parties an opportunity to fully address the information contained in the new studies of Arizona's I/M program, which were then available in the public docket.[4]

Due to the difficulties associated with analyzing the Arizona test data before the end of the previously extended comment period and the existence of three new reports on this subject, EPA believes that reopening the comment period is justified. However, EPA finds that an additional 60 days is unnecessarily long, because each report was provided directly to members of the automotive industry for review, as well as generally being publically available to other interested parties for some time. Therefore, the Agency is reopening the comment period for 30 days to provide an opportunity for: (1) Interested parties to review and comment on the contents of the three documents referenced above, and (2) the submission of any other analytical studies or comments pertaining to Arizona's loaded-mode test. This additional information will be considered in any subsequent final rulemaking action.

Dated: November 27, 1989.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–28874 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

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[1] Letter to Bill Watson, Arizona Bureau of Vehicular Emissions Inspection, from Jane Armstrong, EPA, dated May 23, 1989. Docket A–88–32, Item IV–C–2.

[2] Memorandum from Edward Glover, EPA, dated November 13, 1989. Docket A–88–32, Item IV–C–1.

[3] "Analysis of the Effectiveness of Arizona's Inspection/Maintenance Program," Energy and Environmental Analysis, Inc., August 1, 1989. Docket A–88–32, Item IV–A–3.

[4] Letter from Gregory W. Walker, Motor Vehicle Manufacturers Association, to Richard Wilcox, EPA, October 30, 1989. Docket A–88–32, Item IV–D–8.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-550, RM-6983]

Radio Broadcasting Services; Knob Noster and Wheeling, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brick Broadcasting Company, proposing the substitution of FM Channel 289C3 for Channel 288A at Knob Noster, Missouri. Petitioner also requests modification of its license for Station KXKX, Channel 288A, to specify Channel 289C3. Channel 289C3 can be alloted to Knob Noster at coordinates 38-46-28 and 93-37-34. To accommodate Channel 289C3 at Knob Noster, we shall substitute Channel 290A for 289A (vacant) at Wheeling, Missouri, at coordinates 39-47-12 and 93-23-07.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bick Broadcasting Company, P.O. Box 711, 119 N 3rd Street, Hannibal, MO 63401.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-550, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28753 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-548, RM-7017]

Radio Broadcasting Services; Clintonville, WI, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sail Communication, Corp., licensee of Station WJMQ(FM), Channel 221A, Clintonville, Wisconsin, proposing the substitution of Channel 222C3 for Channel 221A at Clintonville, and the modification of its station's license accordingly. In order to accomplish the upgrade at Clintonville, the proposal requires the substitution of Channel 225A for Channel 226A at New Holstein, Wisconsin, and the modification of the construction permit for Station KFKQ(FM) at New Holstein. In addition, at Wautoma, Wisconsin, Channel 226A must be substituted for vacant but applied for Channel 222A. Channel 222C3 can be allotted to Clintonville with a site restriction of 14.5 kilometers (9 miles) northeast of the city, at coordinates 44-42-36 and 88-37-37. The coordinates used for Channel 225A at New Holstein are 44-02-18 and 88-09-06, which is the site specified in the construction permit for Station KFKQ(FM). The coordinates used for Channel 226A at Wautoma are 44-04-18 and 89-17-30. Clintonville could receive its first wide area coverage FM service, if this proposal is adopted.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lyle R. Evans, P.O. Box 52, Mayville, WI 53050 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-548, adopted November 20, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28754 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-547, RM-6899, RM-7021, RM-7100]

Radio Broadcasting Services; Hannahs Mill and Perry, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three separately filed petitions. The first two petitions, filed by Sam V. Stacy, Jr. ("Stacy"), and Dewitt Coleman, Jr. ("Coleman") propose the allotment of Channel 264A or 266A to Hannahs Mill, Georgia, as the community's first local service. The

third petition, filed by Perry Radio, Inc., ("Perry"), licensee of WPGA(FM), Channel 265A at Perry, Georgia, proposes the substitution of Channel 265C3 for Channel 265A at Perry and modification of its license to specify operation on the higher class co-channel. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 265C3 at Perry or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 264A at Hannahs Mill are North Latitude 32–52–31 and West Longitude 84–18–46, and the coordinates for Channel 266A at Hannahs Mill are North Latitude 32–51–49 and West Longitude 84–25–10. The coordinates for Channel 265C3 at Perry are North Latitude 32–20–52 and West Longitude 83–50–18.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Sam V. Stacy, Jr., 61 Terracedale Ct., Griffin, Georgia 30223 (Hannahs Mill proponent); Daniel F. Van Horn, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036–5339 (Counsel for Dewitt Coleman, Jr.); Lowell L. Register, President, Radio Perry, Inc., P.O. Box 9, Perry, Georgia 31069.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–547, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28755 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–549, RM–6744]

Radio Broadcasting Services; Muskegon and Manistee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Richard L. Culpepper, proposing the substitution of FM Channel 300B1 for Channel 300A at Muskegon, Michigan, and modification of the construction permit for Station WMHG–FM accordingly. Channel 300B1 can be allotted to Muskegon at coordinates 43–17–41 and 86–13–12. To accommodate the substitution at Muskegon, it would be necessary to substitute Channel 268A for 300A (vacant) at Manistee, Michigan, at coordinates 44–14–48 and 86–19–12. Canadian concurrence will be obtained for both allotments.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland, 21701 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–549, adopted November 20, 1990, and released December 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28756 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1501

[FRL 3694–4]

Acquisition Regulation Concerning Ratification of Unauthorized Commitments

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the EPA Acquisition Regulation (EPAAR) to revise EPAAR coverage on the ratification of unauthorized commitments. The EPAAR coverage has been superseded by an amendment to the Federal Acquisition Regulation (FAR). The intended effect of this action is to delete EPAAR coverage that is duplicative of the FAR and to revise the EPAAR policies and procedures on unauthorized commitments.

DATE: Written comments should be submitted not later than January 10, 1990.

ADDRESS: Comments should be addressed to: Environmental Protection

Agency, Procurement and Contracts Management Division (PM–214F), 401 M Street SW., Washington, DC 20460, Attn: Eleanor G. Norment.

FOR FURTHER INFORMATION CONTACT: Eleanor G. Norment, at (202) 382–5035 (FTS 382–5035).

SUPPLEMENTARY INFORMATION:

A. Background

On February 22, 1988, the FAR was amended by FAC 84–33, which added regulatory coverage on the ratification of unauthorized commitments. This proposed rule deletes duplicative coverage in the EPAAR and further amends the EPAAR to clarify and strengthen controls over unauthorized commitments.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities. The rule merely deletes existing material from the EPAAR that is duplicative of FAR coverage and strengthens controls to reduce the occurrences of unauthorized commitments.

List of Subjects in 48 CFR Part 1501

Government procurement.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as follows:

PART 1501—[AMENDED]

1. The authority citation for part 1501 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1501.6 is amended by adding section 1501.602–3 to read as follows:

1501.602–3 Ratification of unauthorized commitments.

(a) *Definition.* "Unauthorized commitment," as used in this subpart, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. The term does not relate to the Agency process for the reservation of funds.

(b) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are:

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changes the terms and conditions of the contract.

(c) *Ratification approvals and concurrences.* (1) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official, provided that he/she has redelegable authority. The responsible Procurement and Contracts Management Division (PCMD) Associate Director is the ratifying official for actions which arise in regional or laboratory sites which do not functionally report to a contracting office.

(3) All proposed ratification actions of $250,000 or more for which the responsible PCMD Associate Director is not the ratifying official shall be forwarded for review to the responsible PCMD Associate Director prior to approval by the ratifying official.

(d) *Procedures.* (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for small purchases exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900–8, with funding sufficient to cover the action. The appropriation data cited on the 1900–8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but should be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may

be accomplished at the discretion of the ratifying official.

(e) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602-3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisdements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) Of the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(f) *Payment of Properly Ratified Claims.* In determining the payment due date, in addition to the requirements concerning receipt and acceptance in FAR, subpart 32.9 and OMB Circular A-125, receipt of a proper invoice is not considered to have occurred until after ratification.

1501.670 [Removed]

3. Subpart 1501.6 is amended by removing section 1501.670.

Dated: November 28, 1989.

John C. Chamberlin,

Director, Office of Administration

[FR Doc. 89-28610 Filed 12-8-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 1]

RIN 2137 AB53

Gas Pipeline Operating Above 72 Percent of Specified Minimum Yield Strength

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: A "grandfather clause" allows certain steel gas pipelines to operate at hoop stress levels above 72 percent of the specified minimum yield strength (SYMS) of the pipe—the highest operating hoop stress permitted on steel pipe in all other regulated gas pipelines. The grandfathered pipelines may not provide as much protection against stress-related failures as lines constructed more recently in similar locations. OPS is concerned about this possible disparity in protection, and invites public participation in determining an appropriate course of action regarding the "grandfather clause.".

DATES: Interested persons are invited to submit written comments on this notice by March 12, 1989 Late filed comments will be considered to the extent practicable. All persons must submit as part of their written comments all of the material that they consider relevant to any statement of fact made by them.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in Room 8426 between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-4148, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

Over a period of about 2 years, gas transmission lines operated by the Texas Eastern Gas Pipeline Company experienced four serious accidents. The first occurred November 25, 1984, on Line 14 in St. Francisville, Louisiana because of a construction defect, killing five persons and injuring 23 others. The second, which happened April 27, 1985, on Line 10 near Beaumont, Kentucky, was caused by external corrosion inside a casing, and resulted in five deaths and three injuries. Then on October 26, 1985, Line 25 failed in Fleming County, Kentucky due to cracks propagating from a material defect, injuring four people. The defect had not been revealed during hydrostatic testing to 105 percent of SMYS. Finally, on February 21, 1986, six persons were injured near Lancaster, Kentucky when Line 15 failed due to corrosion.

Because three of these four accidents occurred within a 10-month period in one State, OPS formed a task force with the Kentucky Public Service Commission to review and evaluate Texas Eastern's operation and maintenance procedures. As set forth in its report, "Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation," November 1986, the task force found deficiencies in Texas Eastern's corrosion control program, which OPS ordered Texas Eastern to correct.

In addition to corrosion control problems, the task force's review revealed that the operating pressure of each of the four pipelines at the time and location of failure stressed the pipe to a level above 72 percent of SMYS. Except on these and other grandfathered lines described below, 72 percent of SMYS is the highest operating hoop stress permissible on steel pipe under the rules governing maximum allowable operating pressure (MAOP) (49 CFR 192.619).

The four Texas Eastern pipelines, which were initially placed in operation between 1952 and 1965, are among a group of pipelines that have been allowed to operate under an exception to the MAOP rule, often called the "grandfather clause" (§ 192.619(c)). Under this clause, pipelines put into service before July 1, 1970, and found to be in satisfactory condition, may be operated in Class 1 locations (essentially rural or offshore as defined by § 192.5) at the highest actual operating pressure they achieved during the 5 years preceding July 1, 1970, regardless of the level of hoop stress on the pipe. (The relevant date for offshore gathering lines is July 1, 1976, instead of July 1, 1970). Three of the four Texas Eastern pipelines are qualified under the grandfather clause to operate as high as 76.9 percent of SMYS, while Line 14 is qualified for operation up to 84.6 percent of SMYS. The task force recommended that OPS begin a research project to evaluate limiting the operating hoop stress of all grandfathered pipelines to 72 percent of SMYS.

History of Grandfather Clause

The "grandfather clause" was adopted at the final rule stage (35 FR 13248; August 19, 1968) in response to comments by the Federal Power Commission (now the Federal Energy Regulatory Commission (FERC)) on a DOT proposed rule concerning the maximum allowable operating pressure (MAOP) of gas pipelines (Notice 70-5, 35 FR 5482, April 2, 1970). DOT had proposed that the MAOP of any steel

gas pipeline in a Class 1 location be limited either to the design pressure of its weakest element or its test pressure divided by 1.1, whichever is lower. The Federal Power Commission said the operating pressures of many interstate gas transmission lines would have to be reduced if this proposal became law because the lines' test pressures had not been high enough to qualify their current operating pressures under the proposed rule. The Commission also said it had found no evidence that requiring a reduction in the operating pressures of these pipelines would materially increase safety.

In view of these statements and because DOT did not have enough information to determine whether the existing operating pressures were unsafe, a "grandfather clause" was added to the final MAOP rule, allowing continued operation of pipelines existing on July 1, 1970, at the highest pressure achieved during the previous 5 years. Operation under the grandfather clause, however, was made subject to the rules on confirmation or revision of MAOP when population near a line increases above the Class 1 limit (§ 192.611). Additionally, in the final rule, the proposal to limit the MAOP of pipelines to "the design pressure of the weakest element" was changed to read "the design pressure of the weakest element in the segment, determined in accordance with Subparts C and D of this part." (See § 192.619(a)(1)). The effect of these changes was to limit the operating hoop stress of non-grandfathered pipelines to 72 percent of SMYS in Class 1 locations, but to allow the grandfathered lines in Class 1 locations to operate above that stress level.

The regulatory history does not explain the safety rationale for limiting the operating hoop stress of Class 1 steel pipelines to 72 percent of SMYS. DOT included this limitation in § 192.619 because it was in the 1968 edition of the *USAS B31.8 Code* and had long been a basis for the industry's recommended MAOP for steel pipelines in Class 1 locations. The 72 percent limitation is not applied universally, however. Canada allows operation at up to 80 percent of SMYS in Class 1 areas, while Japan does not allow operation at more than 40 percent of SMYS.

NTSP Position

After the task force report was released, the National Transportation Safety Board (NTSB) issued a Pipeline Accident Report (NTSB/PAR-87-1), dated February 18, 1989, on the Texas Eastern accidents near Beaumont and Lancaster, Kentucky. The report contains the following recommendation (P-87-9):

> Revise 49 CFR part 192 and, if necessary, request legislative authority to amend 49 CFR part 192 to eliminate the "grandfather clause" which permits operators of [gas] pipelines installed before [July 1, 1970], to operate at levels of stress that exceed those levels permitted for pipelines installed after the effective date of 49 CFR part 192.

In the analysis section of its Accident Report that precedes this recommendation (p. 41), NTSB concluded that if the MAOP of the Beaumont and Lancaster pipelines had been lowered to produce a hoop stress of no more than 72 percent of SMYS, the accidents probably would not have occurred until a later date. NTSB then speculated that in the Lancaster case, the resultant pressure difference at the time and place of failure (924 *vs* 965 psig) "may well have allowed the gas company [time] to have replaced the damaged segment before the accident." (Texas Eastern had begun a rehabilitation program on the Lancaster line about a year before the corrosion-caused accident occurred.) NTSB further stated in the Accident Report (p. 42) that it "does not believe it is sound engineering practice to allow older pipelines, constructed with materials and procedures inferior to those used in new pipelines, to operate at SMYS levels greater than those [allowed] new pipelines."

Preliminary Report on Research

Acting in accordance with the recommendation of its task force, OPS researched the safety considerations pertinent to the operation of pipelines above 72 percent of SMYS. The research also compared the failure record of such pipelines with those operated at 72 percent of SMYS, or less. OPS produced a preliminary report on its research titled, "A Safety Evaluation of Gas Pipelines Operating Above 72 Percent of SMYS," dated August 1987.

The preliminary research report states that the primary factors contributing to the failure of pipelines operating between 72 and 80 percent of SMYS are the number and size of defects present and their rate of growth. The report also states that while time-dependent flow growth was the cause of each failure examined, lowering operating hoop stress to 72 percent of SMYS, as NTSB recommended, would have increased the time to failure only slightly, and would not have prevented any of the failures. OPS concluded in the report that the margin between operating pressure and hydrostatic test pressure, rather than operating hoop stress limit of 72 percent of SMYS, provides primary protection against leaks or ruptures caused by growth of time-dependent defects.

OPS's research identified three operators that had lines operating above 72 percent of SMYS: Colorado Interstate Company, Texas Gas Transmission Company, and Texas Eastern Transmission Company. Since 1970, the incident rate they reported for those lines ranged from 1/10 to 1/2 the incident rate for lines the companies operate below 72 percent SMYS. Another company, El Paso Natural Gas Company, had lines qualified for operation above 72 percent of SMYS, but had none operating in that range.

In the preliminary research report, OPS recommended that operators test grandfathered pipelines operating above 72 percent of SMYS, and that they do not raise the MAOP of other grandfathered lines above the 72 percent level. Testing would include a one-time hydrostatic test to at least 1.25 times MAOP followed by periodic tests with an internal instrumented pig and close-interval electrical surveys. The purpose of the testing would be to minimize the likelihood of failure in service because of the growth of time-dependent defects.

At a meeting on September 22, 1987, OPS presented the preliminary research report for consideration by its gas pipeline advisory committee, the Technical Pipeline Safety Standards Committee (TPSSC). No consensus was reached on the report; the most significant point of discussion was that the recommendation for additional testing might be inappropriate in view of OPS's unfinished study on the frequency of running smart pigs. (OPS has since published a request for information regarding the feasibility of pigging pipelines at periodic intervals (Docket No. PS-105, Notice 1; 54 FR 20948, May 15, 1989), and a report is to be submitted to Congress by April 30, 1990.)

Earlier Rulemaking Effort

Notwithstanding its research conclusion that minimized the importance of the 72 percent of SMYS limit in protecting against time-dependent defect growth, OPS remained concerned that allowing grandfathered lines to operate at higher stress levels than newer pipelines results in an unnecessary safety differential in Class 1 areas. Consequently, in 1988, OPS proposed to repeal the grandfather clause. A draft notice of proposed rulemaking was developed, proposing to require that operators reduce the pressure in grandfathered lines so that they operate at a hoop stress of no more than 72 percent of SMYS by July 1, 1993.

Since the proposal, if adopted, would affect the continuity of gas service, OPS wrote FERC on August 19, 1988, to request its comments on the draft notice. On September 9, 1988, FERC replied that it supported the safety goals of the draft notice, but recommended that OPS further investigate the costs of compliance with the proposal.

On September 13, 1988, OPS again asked the TPSSC to take up the issue of the grandfathered pipelines. This time the TPSSC voted eleven to one to disapprove OPS's draft notice of proposed rulemaking. The TPSSC's objection to the proposal, as set out in the minutes of the meeting, centered on the absence of data showing that the grandfathered lines are unsafe, the need to quantify costs, and the need to justify the proposal in light of the findings of OPS's preliminary research report. Many TPSSC members felt OPS should not take general rulemaking action, but should handle safety problems found on grandfathered lines by taking enforcement action against the company concerned.

Speaking from the audience at the TPSSC meeting, representatives of Texas Eastern Gas Pipeline Company and Texas Gas Transmission Corporation voiced opposition to the OPS draft rulemaking proposal. Texas Eastern argued that its approximately 4,200 miles of grandfathered lines have operated safely above 72 percent of SMYS since 1955, with only four incidents caused by corrosion. The company attributed this safety record not only to its aggressive inspection and maintenance program, but primarily to its policy of post-construction hydrostatic testing to actual yield, which may exceed 100 percent of SMYS. It said high pressure testing provides the largest practical margin of safety against operational failures from latent material or construction defects. Texas Eastern outlined its maintenance program as: (1) Intelligent pig inspection, (2) visual inspection and removal of anomalies detected by the pig, and (3) selective high pressure hydrostatic retesting to validate the pig inspection and ensure the integrity of replaced pipe. Texas Eastern estimated that if the proposal became final, it would have to spend between $300–$350 million in the form of capital additions needed to maintain service under its delivery contracts.

Texas Gas also argued that its grandfathered lines (about 1,183 miles) were being operated safely, and that OPS had not presented any substantial evidence to justify eliminating the grandfather clause. Like Texas Eastern, Texas Gas attributed the safety record of its grandfathered lines to a strong maintenance program, which includes (1) reconditioning, (2) replacement of pipe where necessary, and (3) revalidation hydrostatic testing. Texas Gas emphasized that good maintenance can stop or retard the effect of time degradation on pipelines.

In addition to disputing the need to eliminate the grandfather clause, Texas Gas's challenged OPS's legal authority to do so, citing the restriction in section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1672(a)) against establishing safety standards that affect the design of gas pipelines in existence when the standards are adopted. Texas Gas argued that since pipeline design is a function of operating pressure, any safety standard that requires a reduction in operating pressure affects pipeline design and, therefore, may not be applied to pipelines in existence when the standard is adopted. OPS believes, however, that this argument blurs the clear distinction between pipeline design and operation contained in the statutory language that provides DOT broad regulatory authority over the operation of existing gas pipelines (49 App. U.S.C. 1672(a)). In fact, under § 192.611, DOT has already exercised this authority, without legal challenge, to require reductions in the MAOP of grandfathered lines when population near the lines increases above the Class 1 limit.

Safety Concerns

As explained previously in this document, DOT adopted the grandfather clause primarily so that gas transmission lines that had not been pressure tested to a level of at least 1.1 times their operating pressure could continue to operate in Class 1 locations without retesting or reducing pressure. However, all grandfathered lines operating above 72 percent of SMYS that OPS examined in its recent research (discussed above) had been tested well above that level. Although not exhaustive, the research covered all transmission companies subject to OPS jurisdiction. Thus, insufficient qualifying test levels do not appear to be a problem for grandfathered pipelines operating above 72 percent of SMYS.

OPS has concluded that the 72 percent limit provides only slight protection against failures caused by time-dependent defect growth. But, the 72 percent limit also protects against another type of failure. The margin between operating stress, as represented by the 72 percent limit, and SMYS protects against failures due to accidental overloading. The greater the margin, the greater the accidental overloading a pipeline can withstand before failure.

In this respect, Japanese pipelines in areas of high seismic activity are safer operating at 40 percent of SMYS than they would be if operated at 72 percent of SMYS. Besides earthquakes, accidental overloading can come, for example, from overpressure, land slides, or sudden impact. Excessive overloading can cause latent defects to grow rapidly to failure. Although OPS's research did not indicate that accidental overloading is a significant safety consideration for grandfathered pipelines, it is no less a consideration for these lines than other Class 1 lines that are subject to the 72 percent limitation. Therefore, in view of (1) the continual occurrence of accidents due to latent defects on grandfathered lines operating above 72 percent of SMYS, (2) the lower level of protection these lines provide against failures due to time-dependent defect growth and accidental overloading, and (3) the NTSB recommendation, OPS is concerned about the prudence of continuing to allow grandfathered lines to operate above 72 percent of SMYS, especially in the absence of a requirement that operators conduct a program to detect and remove as many latent defects as reasonably possible.

Request for Information

OPS is considering three alternative courses of action: (1) Repeal the grandfather clause by a date certain for lines operating above 72 percent of SMYS; (2) modify the grandfather clause for lines operating above 72 percent of SMYS, making it contingent on conducting certain remedial activities, such as hydrostatic testing and pigging; and (3) retain the grandfather clause as is.

To assist OPS in selecting a course of action and responding to the concerns of the TPSSC, interested persons are invited to answer the following questions in commenting on this notice:

1. What operators, if any, besides Colorado Interstate, Texas Gas, Texas Eastern, and El Paso have Class 1 pipelines whose MAOP is authorized by the grandfather clause of § 192.619(c)? If you are such an operator, please estimate the number of miles of pipeline involved, and the number of miles authorized to operate at hoop stress levels above 72 percent of SMYS.

2. Should OPS continue to allow grandfathered pipelines to operate at hoop stress levels above 72 percent of SMYS? If yes, please describe any safety measures over and above the

requirements prescribed by part 192 that you consider necessary to qualify the lines for safe operation, estimate the costs involved in implementing these additional safety measures, and state the extent to which they are being implemented. If no, please explain your position in terms of public safety considerations, and describe the effects and estimate the costs of reducing the allowable operating hoop stress of grandfathered lines to 72 percent of SMYS.

Commenters are not limited to filing comments only on the questions presented above, and may submit any facts and views consistent with the intent of this advance notice. In addition, commenters are encouraged to provide comments on (1) "major rule" considerations under the terms of Executive Order 12291; (2) "significant rule" considerations under the terms of DOT regulatory procedures (44 FR 11634); (3) potential environmental impacts subject to the National Environmental Policy Act; (4) information collection burdens that must be reviewed under the Paperwork Reduction Act; (5) the economic impact on small entities under the Regulatory Flexibility Act; and (6) impacts on Federalism under Executive Order 12612.

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53; and App. A of part 106.

Issued in Washington, DC on December 6, 1989.

George W. Tenley, Jr.,

Director, Office of Pipeline Safety.

[FR Doc. 89-28793 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-25 Notice 1]

RIN 2127-AC69

Federal Motor Vehicle Safety Standard 205 Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Head up displays (HUD's), systems that are capable of optically projecting instrument panel readings so that they appear on some portion of the windshield, could affect the ability of drivers to view the road ahead. As a result of requests for interpretation on the extent to which HUD's and other devices may be allowed on passenger car windshields, the agency is conducting a review of visibility through windshields. This review is necessary to enable the agency to address issues such as the size and location of HUD's and determine whether it is desirable to propose new requirements for the purpose of allowing the use of HUD's while ensuring that the HUD's do not interfere with the driver's viewing of road conditions.

DATES: Comments must be received on or before January 25, 1990.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. [Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.].

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM-11, Room 5307, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 355-5276.

SUPPLEMENTARY INFORMATION: In order to assist motorists' driving performance, motor vehicle manufacturers are introducing new devices to enhance driver awareness of how their motor vehicle is operating. One such new device is the head up display (HUD), a system that is capable of optically projecting instrument panel readings so that they appear on some portion of the windshield. Although the image is not the same as a holographic image, it resembles a hologram in that the image appears to float in space in front of the viewer. The companies that are developing HUD's believe that having the readings projected in this manner places them closer to the driver's line of sight and thus allows the driver to view the information more readily than if the driver had to look further down for the information on the instrument panel.

NHTSA has a policy of facilitating technological innovations, especially those that in some respect may enhance safety. At the same time, the agency wishes to assure that innovative devices do not adversely affect safety. In the case of HUD's, the agency believes that there is a need to address several issues. One issue is the possibility that they may, depending upon their placement, interfere with the ability to see the view of road conditions ahead. Another is that, again depending on factors such as location or brightness, they may distract the driver from viewing the road ahead. Accordingly, the agency is examining these issues through the issuance of this notice. Because the areas of a windshield necessary for driver visibility to ensure safe driving are not objectively defined, this ANPRM explores two approaches to defining and regulating these areas, for the limited purpose of defining where HUD's may be placed. Neither of the approaches entails restricting the placement of existing components, such as wiper blades and hood ornaments, seen through the vehicle windshields. Finally, the approaches relate to passenger cards, multipurpose passenger vehicles (MPV's) and light trucks only.

Background of Advance Notice of Proposed Rulemaking

The agency has occasionally issued interpretation letters in response to questions relevant to HUD's, but has not attempted to address the issue through rulemaking. A brief review of these interpretations will provide a context for consideration of the rulemaking options.

Standard No. 205 embodies the concept that some window are more important than others for visibility, but does not systematically address the question whether some areas within a given window are more important than others, or how these areas are to be defined. The standard incorporates American National Standard Z-26.1-1977, and its 1980 supplement, Z-16.1a, which have also been the subject of letters requesting interpretation. In a 1974 interpretation, NHTSA stated that the reference in S5.1.1 to "levels requisite for driving visibility" (a term also used in Z26) referred to vertical height relative to the driver's eyes, but the agency did not seek to define those levels. In 1987, the developer of a HUD that employs a small membrane near the lower left edge of the windshield sought an interpretation that the membrane was not at a level requisite for driving visibility, arguing in support of its case that the membrane was transparent and that, while its light transmittance was below 70 percent, similar transmittance values were permitted for the shade bands. In its letter permitting the use of the requested HUD, the agency cited the foregoing characteristics of the HUD, as well as the fact that the HUD lay largely outside the areas of the windshield that are required to be cleared by the defroster and the windshield wipers under Standards No. 103 and 104. The interpretation thus dealt with considerations that might be relevant to a general regulatory treatment of HUD's, but in the limited context of a single HUD design.

The final interpretation relevant to HUD's was issued in 1988 in response to a manufacturer's proposed extension of shade banding to the bottom and sides of the windshield. The banding would have allowed less than 70 percent light transmittance and was ruled unacceptable by the agency for use on the sides of the windshield and for use on the bottom of the windshield except for areas through which the shortest drivers could see only the hood or other parts of the vehicle. Although the manufacturer urged the agency to consider applying European Economic Community Directive 77/649/EEC, which sets boundaries for the driver's forward field of vision, the agency rules that this directive was inconsistent with the "requisite for driving visibility" terminology of Standard No. 205 and declined to apply the Directive. Insofar as the interpretation addressed banding that was proposed for the entire perimeter of the windshield, it did not discuss the prospects for smaller areas of reduced transmittance.

These interpretations address some issues relevant to HUD's but fall short of providing comprehensive guidance to manufacturers considering the adoption of this technology. In view of what appears to be an increasing interest in HUD's, the agency has decided to explore the issue through rulemaking.

Options for Rulemaking

The principal question is whether the agency should more precisely specify those areas of windshields that are at "levels requisite for driving visibility." The agency indicated in its 1987 letter that it plans to initiate a rulemaking action to address this issue, instead of continuing a case-by-case determination of whether particular areas are at levels requisite for driving visibility.

Accordingly, the following two options are offered for public comment. It is requested that commenters express their preference for one, and provide a rationale for their position. Any studies or quantitative data supporting the positions taken are welcome.

Option A—Adopt 77/649/EEC With Modifications

This option has the advantage of utilizing a regulation that is readily available. However, it needs to have an inconsistency resolved before adoption by NHTSA. At present, there is no uniform reference point from which to make measurements for the requirements. The Directive requires automobile manufacturers in the European market to provide an adequate forward field of vision for drivers. It limits the type, size, and location of obstructions in the 180-degree forward field of vision of drivers of specific vehicle types. The only obstructions allowed in the forward field of vision are "A" pillars, vent window division bars, rearview mirrors, and windshield wipers. Vehicles are limited to two "A" pillars which may not be larger than a specified angular size with relation to a defined point. A minimum expanse of 70% transmittance windshield is defined by six points. "A" pillars must be located outside of the windshield region, but a rearview mirror is in some cases allowed in this region in order to meet Council Directive 71/127/EEC, as amended by Directive 79/795/EEC, which specifies rear view mirror requirements for the European market.

Among the problems with the presently worded Directive is a lack of a requirement for a seating reference point (or H-point at the rearmost and lowest seat adjustment position). In the 77/649/EEC Directive the "R" point is used. The EEC defines the R point or "seating reference point" as the reference point specified by the vehicle manufacturer which has coordinates determined in relation to vehicle structure and which corresponds to the theoretical position of the point of torso thighs rotation (H point) for the lowest and most rearward normal driving positions or (as an alternative) position of use given by the vehicle manufacturer for each seating position specified by the manufacturer. This means that the EEC definition would allow the manufacturer to designate any seat adjustment position to be used for establishing the seating reference point, making the definition almost meaningless because of the myriad locations that could thus be defined as "references." The agency would instead, require a specific fixed location at the rearmost and lowest seat adjustment position.

Another problem with the EEC requirement is that it only requires a minimum expanse of 75 percent transmittance windshield defined by six outer extremity points. The area where HUD's might be located is not regulated. Modifications to 77/649/EEC could define this area better.

Option B—Formulate New Standard

This option would entail new requirements, not based on 77/649/EEC, either in the form of a new Federal Motor Vehicle Safety Standard, or as amendments to Standard 205. Option B would be based on the criteria used in the agency's previous interpretation letters to limit areas on the front windshield that may not have HUD's. Areas that are not at "levels requisite for driving visibility" would be able to have light transmittance of less than 70% and would be possible locations for HUD's. Besides limiting their placement on the windshield, NHTSA seeks information on whether to regulate HUD's for light transmittance (for both night and day), maximum and minimum brightness, size, quantity, type and form of information (numbers, letters, symbols) to be displayed, and the effect of HUD's on driver performance. Comments from the public and internal NHTSA work would to a large degree provide the basis for these requirements. Because it represents a new effort on the part of the agency. Option B would probably take longer to implement than the first option.

Miscellaneous Issues Involving HUD's and Visibility

In order to evaluate these options, the agency requests answers to the following specific questions. Any supporting quantitative data are welcome.

1. Do passenger cars sold in the United States currently meet Directive 77/649/EEC, with the seating reference point established with the driver's seat at the lowest and rearmost seat adjustment position?

2. Is Directive 77/649/EEC adequate for determining "areas" of vehicle windshields requisite for driving visibility? Are the areas between the six visibility measurement points adequately regulated? Are the areas outside of the six points adequately regulated? Without a seating reference point location precisely specified, how are visibility determinations made? How much variation can exist?

3. To what extent does Directive 77/649/EEC conflict with Standard 205 and ANS Z26? Should the rule seek to resolve conflicts between the two regulatory schemes?

4. How can the areas of vehicle windshields that are "requisite for driving visibility" for all sizes of potential drivers be determined?

5. What changes in vehicle design by manufacturers are foreseen which may enhance or restrict visibility in the windshield region for drivers in the future? For example, are variable light transmittance windshields planned for production? What is the minimum contrast that should be allowed with bright head up displays contrasted against such a darkened area?

6. What would be the costs and benefits of requiring an in-vehicle standard for windshield transmittance? This would measure the loss in transmittance due to installed

configuration of the glazing, thereby accounting for such variables as the rake angle and curvature of windshield installations in vehicles.

7. Where should shade bands be allowed on windshields? Should any value other than 70 percent transmittance be permitted for the windshield, including such bands?

8. Comment is requested on both the approach used in the January 1989 article "A Study of Driver's Forward Fields of Direct View for Large Trucks by Naofumi Nagaike and Yukio Hoshino, in the JSAE Review Vol. 10, No. 1, to define critical areas of visibility, and on this approach combined with the 77/649/EEC approach.

9. Given the above considerations, what restrictions, if any, should be placed on head up displays? Should the number of HUD's or the type of information (e.g., speed, fuel level) be regulated?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above. This advance notice of proposed rulemaking is not subject to Executive Order 12291, which applies only to notices of proposed rulemaking and final rules. Moreover, NHTSA does not believe that this advance notice is a "significant" rulemaking action under either Office of Management and Budget or Department of Transportation regulatory policies and procedures. Public comment on this position is welcome. The agency acknowledges, however, that the advance notice concerns a matter in which there is substantial public interest.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

NHTSA solicits public comments on the issues presented in this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issue Date: December 6, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-28792 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals in Beaufort and Chukchi Seas

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of comment period on proposed rule.

SUMMARY: The National Marine Fisheries Service is extending the comment period on a proposed rule (54 FR 40703) that would allow the harassment of marine mammals during exploration for oil and gas in the Chukchi and Beaufort Sea for the next 5 years. The extension was requested by the counsel to the Alaska Eskimo Whaling Commission and the counsel to the exploration companies requesting the rulemaking. The proposed rule was published October 3, 1989, with a 60-day comment period that ended December 4, 1989.

DATES: Comments should be received by January 16, 1990.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS (301 427-2322) or Ron Morris, Alaska Region, NMFS (907-271-5006).

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-28829 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Expanded Animal Damage Control Proposal, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to consider expanding the authorized predatory animal damage control methods on the Dixie National Forest, Utah and to recognize the transfer of the animal damage control program from the Department of Interior to the Department of Agriculture. The EIS will tier to and amend the Land and Resource Management Plan (September 1986) which provides the guidance for all natural resource management activities and establishes management standards and guidelines for the Dixie National Forest.

The Forest Service is seeking information and comments from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by December 31, 1989.

ADDRESS: Submit written comments to: Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, UT 84720–0580.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Ronald L. Rodriguez, Wildlife Biologist, Dixie National Forest, P.O. Box 0580, Cedar City, UT 84721–0580. Phone: (801) 586–2421.

SUPPLEMENTARY INFORMATION: Animal damage control activities under consideration would occur on National Forest system lands on and immediately adjacent to permitted livestock allotments.

The Forest Plan currently provides for animal damage management in cooperation with the Utah Division of Wildlife Resources, the Fish and Wildlife Service and other appropriate agencies and cooperators, and authorizes trapping (including snaring), denning, and aerial gunning as control methods.

The proposal would recognize the transfer of the animal damage control program from the Fish and Wildlife Service under the under the U.S. Department of Interior to the Animal and Plant Health Inspection Service (APHIS) under the U.S. Department of Agriculture, and expand the potential control methods and techniques to include: (1) Calling and ground shooting (which was inadvertently omitted from the Forest Plan), and (2) sodium cyanide devices (M–44's). The proposal would also discuss three control strategies: (1) Corrective control on local depredating target populations or individual animals: this control is utilized to solve problems after depredations have occurred such as coyote predation upon lambs and sheep. This strategy is employed as soon as possible after predation is confirmed. It usually requires the spot removal of individuals or small numbers of target species causing problems. (2) Preventive control or the general suppression of the offending segment of the local population of coyotes. This strategy is utilized most often on high summer sheep allotments where unacceptable high levels of losses have occurred during the preceding use period. The removal of the potential depredating target animals from these areas prior to range utilization is attempted. (3) Offending animal management. In predator depredation control the removal of only the offending individual is most effective for bear, cougar, and bobcat depredation control.

A reasonable range of alternatives will be considered. One of these will be the "no action" alternative in which no additional animal damage control measures would occur beyond those currently authorized by the Forest Plan. Other alternatives will examine the use of additional methods including calling and shooting, and sodium cyanide devices (M–44's). The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives.

Public participation is important during the analysis. During preliminary scoping, considerable public interest was expressed, resulting in the decision to prepare an Environmental Impact Statement. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participate in this extended scoping process by submitting new or additional comments by December 31, 1989.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 1978), and that environmental objections that could have raised at the draft stage may be waived if not raised until after completion of the final EIS (Wisconsin Heritages Inc., v. Harris, 490 F. Supp. 1334, 1338 [E.D. Wis 1989]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in January 1990. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest

Service in preparing the Final Environmental Impact Statement (FEIS). The Final Environmental Impact Statement is scheduled to be completed by April 1990. In the FEIS, the Forest Service will respond to the comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be document in a Record of Decision.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

Dated: November 27, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89-28794 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1990 Panel Wave 2.

Form Number: SIPP-10200, SIPP-10205(L).

Agency Approval Number: 0607-0670.

Type of Request: Revision of a currently approved collection.

Burden: 25,200 hours.

Number of Respondents: 50,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: Wave 2 of the Survey of Income and Program Participation (SIPP) is the first interview period of the 1990 Panel that contains topical modules (supplemental questions to the core SIPP questions). The modules for Wave 2 are collectively called the "Personal History" topical module. The prime reason for inclusion of this module in the SIPP is to gain pertainent information about the past experiences of SIPP sample persons.

Affected Public: Individuals or households.

Frequency: Three times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28814 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cotton Ginnings Census Program.

Form Number: CAg-1A thru CAg-1L, CAg-3, CAg-5, CAg-5a.

Agency Approval Number: 0607-0047

Type of Request: Revision of a currently approved collection.

Burden: 1,521 hours.

Number of Respondents: 1,755.

Avg Hours Per Response: 4 minutes.

Needs and Uses: Title 13 USC specifically requires that the Census Bureau collect and publish statistics for cotton ginned prior to 13 specified dates. This survey is the only source of data on current cotton ginnings. The USDA uses these data in making its monthly and annual crop production, classification, and production cost estimates. Data are used by the cotton industry and are considered vital in providing a stable market.

Affected Public: Businesses or other for-profit organizations and small businesses or organizations.

Frequency: Semi-monthly (CAg-1A thru CAg-1L). Annually (CAg-3, CAg-5, CAG-5a).

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28815 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 452]

Approval for Expansion of Foreign-Trade Zone 89 Clark County, NV Within the Las Vegas Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

Whereas, the Nevada Development Authority, Grantee of Foreign-Trade Zone No. 89, has applied to the Board for authority to expand its general-purpose zone at sites in Clark County, Nevada, within the Las Vegas Customs port of entry;

Whereas, the application was accepted for filing on December 11, 1987, and notice inviting public comment was given in the Federal Register on December 18, 1987 (Docket 42-87, 52 FR 48137);

Whereas, the application was amended on January 28, 1988, withdrawing a site from the request;

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Las Vegas area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed December 11, 1987, as amended. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance

with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 4th day of December, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-28813 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 4, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The review covers one exporter of this merchandise to the United States, Rhone Poulenc Chimie de Base, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we determine that the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 32103) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988.

All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. During the review period such merchandise was classified under item number 421.3400 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period, and there are no known unliquidated entries.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent, Rhone Poulenc.

Comment 1: Rhone Poulenc contends that its margin should be based on data from the most recent review for which information is available. Rhone Poulenc has not sold ASM to the United States since 1985. The Department rejected as inadequate the company's questionnaire responses for both the 1984 and 1985 review periods. Assuming *arguendo* that the Department was justified, the next most recent information otherwise available was that used by the Department for the 1983 review period. Therefore, Rhone Poulenc contends, the 1983 data, adjusted for conditions existing in 1988, should form the basis of its margin in the current review.

Department's Position: We disagree. We verified through Customs that Rhone Poulenc did not ship ASM to the United States during the period of review. Consistent with our long-standing policy in administrative reviews covering periods where there are no shipments, we based the margin in this review on the margin found in the last review in which there were shipments. For the 1985 review period, the last period during which there were shipments, we determined that Rhone Poulenc's margin was 60 percent (*see* 52 FR 33856, September 9, 1987). Regardless of whether this rate was based on the best information otherwise available, we consider it to be a more appropriate rate than the 1983 rate because the 1985 rate is our most recent estimate of Rhone Poulenc's margin.

Comment 2. Rhone Poulenc contends that whatever antidumping margin is determined in this review period must be based on actual data. Section 776 of the Tariff Act states that, in the indicated circumstances, the Department must "use * * * information * * *" Simply adopting a rate from a prior proceeding does not comply with the statute. Instead, the statute requires the Department literally to "use" information, that is, data, in calculating a rate. Therefore, even if the Department were authorized to employ remote data from the 1980 investigation, the margin would have to be based on current currency exchange rates, interest rates, and substantive adjustment methods. Rhone Poulenc maintains that, since the most up-to-date information in the Department's possession is the 1983 review period data, and since the current rate must reflect conditions existing in 1988, not 1983, the Department should calculate the rate for the current review using the 1983 rate as the base and adjusting that rate for market conditions in 1988.

Department's Position: We disagree. Section 776 of the Tariff Act establishes rules for verification of information and the use of the best information otherwise available. It does not require the Department to simulate the most accurate and up-to-date rate using such speculative methods as those suggested by Rhone Poulenc. As explained in our response to *Comment 1*, we believe that the 1985 rate is the most appropriate dumping margin for Rhone Poulenc in this review. This margin will remain unchanged until, in a future administrative review, we determine that Rhone Poulenc has resumed shipments of ASM to the United States, and we calculate a different rate.

Final Results of Review

Based on our analysis of the comments received, we determine that the final results are the same as those presented in the preliminary results. We determine the margin to be:

Manufacturer/ Exporter	Time period	Margin (percent)
Rhone Poulenc	1/88–12/88	[1] 60

[1] No shipments during the period; margin from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 60.00 percent for Rhone Poulenc. For any future shipments from the remaining known exporters not covered in this review, the cash deposit will continue to be at the rate for each of those firms published in the final results of the last administrative review covering the firm (53 FR 43251, October 26, 1988), or the antidumping duty order (46 FR 1667, January 7, 1981) if a review covering the firm has not been conducted.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1988, and who is unrelated to any reviewed firm, a cash deposit of 60.00 percent shall be required. This deposit requirement is effective for all shipments of anhydrous sodium metasilicate from France entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.22 of the Department's new regulations (54 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: December 1, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28811 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-809]

Antidumping Duty Order: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of certain small business telephone systems and subassemblies thereof from Japan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of certain small business telephone systems and subassemblies thereof for consumption from Japan made on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769, or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The products covered by this order are certain small business telephone systems and subassemblies thereof, currently classified under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software

used on external data processing equipment.

As noted in the preliminary determination notice (54 FR 31978), the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 10, 1989, the Department made its final determination that certain small business telephone systems and subassemblies thereof from Japan are being sold at less than fair value (54 FR 42541, October 17, 1989). On November 29, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain small business telephone systems and subassemblies thereof from Japan. These antidumping duties will be assessed on all unliquidated entries of SBTS from Japan entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (54 FR 31978).

On or after the date of publication in the **Federal Register** of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin percentage
Toshiba Corp.	136.77%
Matsushita Electric Industrial Co., Ltd., Matsushita Communication Industrial Co. Ltd., Kyushu Matsushita Electric Co., Ltd.	178.93%
All Others	157.85%

This determination constitutes an antidumping duty order with respect to certain small business telephone systems and subassemblies thereof from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28809 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration Administration

[A-583-806]

Antidumping Duty Order: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of certain small business telephone systems and subassemblies thereof from Taiwan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of certain small business telephone systems and subassemblies thereof for consumption from Taiwan, except those of Sun Moon Star, made on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Kathleen Boyce, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769, or 377-4198.

SUPPLEMENTARY INFORMATION: The products covered by this order are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or

modules, with or without additional apparatus: Connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capacity when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 10, 1989, the Department made its final determination that certain small business telephone systems and subassemblies thereof from Taiwan are being sold at less than fair value (54 FR 42543, October 17, 1989). On November 29, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain small business telephone systems and subassemblies thereof from Taiwan except those of Sun Moon Star. These antidumping duties will be assessed on all unliquidated entries of SBTS from Taiwan except those of Sun Moon Star entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the Federal Register (54 FR 31987).

On or after the date of publication in the Federal Register of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin percentage
Taiwan Nitsuko Co., Ltd.	129.73%
Sun Moon Star	0.00%
All Others	0.00%

This determination constitutes an antidumping duty order with respect to certain small business telephone systems and subassemblies thereof from Taiwan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28810-Filed 12-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States, G. Conradt & Sohn ("Conradt"), and the period December 1, 1987 through November 30, 1988.

We invited interested parties to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Jugelman, Office of Antidumping Compliance, Interntional Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 33256) the preliminary results of its administrative reveiw of the antidumping finding on animal glue and inedible gelatin from West Germany. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of West German animal glue and inedible gelatin. During this review period such merchandise was classifiable under item numbers 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchanidse is currently classifiable under Harmonized Tariff Schedule ("HTS") items 3503.00.20 and 3506.10.10 The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Conradt, and the period December 1, 1987 through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period and there are no known unliquidated entries.

Conradt requested revocation from the finding based on no shipments to the United States since 1976. Prusuant to § 353.25 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25), we determine that Conradt does not qualify for revocation because the absence of

shipments can no longer be used as the basis of revocation.

Final results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of review. We determine the margin to be:

Manufacturer/ exporter	Period	Margin (percent)
Conradt	12/1/87–11/30/88	[1] 67

[1] No shipments during the period; margin from the last period in which there were shipments.

Further, as provided for by § 353.22(c)(10) of the Department's regulations, a cash deposit of estimated antidumping duties of 67 percent shall be required for Conradt. For any shipments from the six remaining known manufacturers and/or exporters and the one known third-country reseller not covered in this review, the case deposit will be the same as the rates published in the final results of the last administrative review for each of these firms (49 FR 13565, April 5, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988 and who is unrelated to the reviewed frim or any previously reviewed firm, no cash deposit shall be required.

These cash deposit requirements apply to all shipments of West German animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 1, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–28812 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Alabama

December 5, 1989

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 05/1/90 to 04/30/91. The MBDC will operate in the Mobile, Alabama, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications January 15, 1990. Applications must be postmarked on or before January 15, 1990.

ADDRESS: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE., Suite 505, Atlanta, Georgia 30309, 404/347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia, Wednesday, December 27, 1989, at 9 a.m.

Dated: December 5, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 89–28858 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered Species; Modification of Permit; Southwest Fisheries Science Center (P77#36); Modification No. 1 to Permit No. 691

Pursuant to the provisions of Sections 217–222 of the Regulations Governing Endangered and Threatened Species Permits, Scientific Research Permit No. 691 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California, 92038 on October 30, 1989, (54 FR 47105), is modified as follows:

Section A.3 is added:

3. Up to 100 salvaged (found dead) olive ridley turtles (*Lepidochelys olivacea*) may be taken and imported.

This modification became effective on December 4, 1989.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-28748 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Correction

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Marine Mammals; Notice of Correction.

SUMMARY: The National Marine Fisheries Service is correcting the notice of application for a permit for the National Zoological Park—Smithsonian Institution (P6L). In notice document 89-25537, issued Tuesday, October 31, 1989, page 45776, paragraph 3 is revised as follows:

3. Name and Number of Marine Mammals: Harbor seals (*Phoca vitulina*), up to 218; * * *

Dated: December 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-28746 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 91281-9281]

Mask Works; Extension of Existing Interim Orders

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Extension of existing interim orders issued under section 914 of the Semiconductor Chip Protection Act (SCPA), 17 U.S.C. 914.

SUMMARY: The Assistant Secretary and Commissioner of patents and Trademarks has determined that the existing interim orders issued under section 914 of the SCPA should be extended.

DATE: Existing interim orders for Japan and Sweden are hereby extended until July 31, 1991. Interim orders for the Member States of the European Communities, Australia, Austria, Canada, Finland and Switzerland are extended until December 31, 1990.

ADDRESS: Address correspondence to Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Commissioner of Patents and Trademarks has been delegated the task of determining when and under what conditions interim protection in the United States will be extended under section 914 of the SCPA to foreign "mask works," the series of related images representing a three-dimensional pattern in the layers of a semiconductor chip. In international parlance, mask works are also known as "integrated-circuit layout designs" or as "tophographies." To be eligible for interim mask work protection, it must be established that a foreign government is making good faith efforts and reasonable progress toward establishing a regime of protection substantially similar to that established under the SCPA, and that U.S. mask works are not subject to unauthorized distribution or commercial exploitation in the country concerned.

The Congress extended the Executive's authority to issue interim orders until July 31, 1991. Pub.L. 100-159 (1987). In doing so, Congress expressed its belief that "this process [under section 914] is promoting the protection of U.S. mask works abroad." H.R. Rep. No. 100-388, 100th Cong., 1st Sess. (1987).

Interim orders have been issued extending protection to 19 States. *See* 54 FR 13931 (April 6, 1989); *see also* 54 FR 22351 (May 23, 1989). Among those countries, Japan, Sweden, Austria and several Member States of the European Communities (EC) have laws in force.

On September 26, 1989, a Notice of Initiation of Proceeding was published at 54 FR 39491, whereby the Commissioner requested comments on the extension of interim orders issued under section 914. To allow sufficient time for a thorough review in the present proceeding, the Commissioner also extended the expiration date for the existing orders until December 31, 1989.

Comments were received from the Governments of Australia and Canada.

Summary of Comments

In its comments, the Government of Australia states that the "Circuit Layouts Act 1989" was passed by the Australian Parliament in May 1989. The Act, which will come into force sometime during 1990, will extend protection to mask works first commercially exploited in the United States, and works made by a U.S. citizen, national or resident. Prior to the Act's effective date, U.S. mask works will be protected on the basis of national treatment as artistic works under the "Copyright Act 1968."

The Government of Canada notes that a bill for the protection of "integrated-circuit topographies" is now being finalized and will be introduced in the Canadian Parliament in the near future, having been approved by the Canadian Cabinet in May 1988. The Canadian Government refers to the May 1989 diplomatic conference held in Washington under the auspices of the World Intellectual Property Organization (WIPO) to conclude a treaty for the protection of integrated-circuit layout designs. The Government states that its delegation was among those that sought to achieve a multilateral instrument that set adequate and effective minimum standards of protection. The compromises reached at the diplomatic conference, however, especially on the issues of compulsory licensing and term of protection, led Canada to reject the treaty, as did the United States and Japan. The Canadian Government affirms its hope that negotiations on trade-related aspects of intellectual property rights (TRIPS) within the General Agreement on Tariffs and Trade (GATT) will establish adequate standards of protection for integrated-circuit layout designs.

Discussion and Findings of the Commissioner

When the Commissioner last extended the interim orders in April 1989, he noted that all countries then subject to interim protection had closely cooperated with the United States to work toward establishment of the new "Treaty on Intellectual Property in Respect to Integrated Circuits," then under preparation within the WIPO. *See* 54 FR at 13932. In May 1989, a diplomatic conference for conclusion of the WIPO treaty was held in Washington at the invitation of the United States. Despite years of careful preparatory work intended to produce an effective multilateral system of chip layout-design protection, substantial compromises struck at the diplomatic conference resulted in a treaty with levels of protection that fall below international norms reflected in the laws of those countries subject to section 914 orders that have enacted chip protection legislation.

Among the treaty's deficiencies are a term of protection of insufficient duration, lack of sufficient negotiating history to support a clear prohibition against importation of products containing infringing chips, absence of any obligation for innocent infringers to

pay a royalty after notice of infringement, overly-broad compulsory licensing provisions, and an inadequate framework for dispute settlement among signatories.

As has been noted by Representative Robert W. Kastenmeier, Chairman of the House Subcommittee on Courts, Intellectual Property and the Administration of Justice, the transition provisions in section 914 were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). The legislative history of section 914 evinces congressional intent that the Executive use the issuance of interim protection orders as a means to encourage other nations to move expeditiously to establish regimes with levels of protection substantially similar to the SCPA. *See* H.R. Rept. 100–388, *supra*, at 3–4 (1987).

Based on the information available in this proceeding, the Commissioner has determined that the interim protection orders for Japan and Sweden should be extended until the expiration of statutory authority to grant such orders under section 914, that is, until July 31, 1991. Those countries have enacted laws providing protection on a level substantially similar to that of the SCPA, these laws have been in force for longer than one year, and practice under the laws reveals a high degree of effective protection for U.S. mask works.

The interim protection orders for all other countries—the Member States of the EC, Australia, Austria, Canada, Finland and Switzerland—will be extended for one year, until December 31, 1990. This will enable the Commissioner to review chip protection legislation as it comes into force in those countries, and as a practice under such legislation evolves. The Commissioner notes with approval that legislation is nearing completion in all countries subject to section 914 orders, and that the legislative texts reviewed would establish protection substantially similar to the SCPA.

In regard to the Member States of the EC, the Commissioner notes that legislation is already in force in a majority of the States. Interim orders for all twelve States will be extended for one year, however, to permit the Commissioner to evaluate the system of chip design protection to be provided in the Community as a whole when all laws are in place.

No evidence has been presented that nationals, domiciliaries or sovereign authorities or any country subject to interim protection orders are engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works.

Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9 of Title 17, United States Code

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based on the record of this proceeding commenced on September 26, 1989, I find that the governments of Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom have made and are making good-faith efforts toward providing protection for U.S. mask works. I find further that nationals, domiciliaries, and sovereign authorities of those countries, and persons controlled by them, are not engaged in the misappropriation, unauthorized distribution or unauthorized commercial exploitation of mask works. I find further that the extension of the expiration dates for interim orders will promote the purposes of the Semiconductor Chip Protection Act of 1984 and international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for Japan and Sweden are hereby extended and shall terminate on July 31, 1991. The existing interim orders for Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland and the United Kingdom are hereby extended and shall terminate on December 31, 1990.

Dated: November 30, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89–28761 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 18133, published on April 27, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of April 24, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the eight-month period which began on May 1, 1989 and extends through December 31, 1989.

Effective on December 12, 1989, the directive of April 24, 1989 is amended to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Peru:

Category	Adjusted 8 mon. limit [1]
219	9,348,510 square meters.
338/339	519,507 dozen of which not more than 358,491 dozen shall be in Categories 338-S/339-S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28822 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Custom port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Peru, as amended and extended by a Memorandum of Understanding dated March 3, 1989, establishes limits for the period January 1, 1990 through December 31, 1990.

The sublimit for Categories 338-S/339-S has been reduced to account for carryforward used during the previous restraint period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding, but are designed to assist only in the implementation of certain provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated March 3, 1989 between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Limits not in a Group:	
219	15,158,135 square meters
220	9,398,401 square meters
226/313	17,723,326 square meters of which not more than 3,342,755 square meters shall be in Category 226
300/607-K[1]	1,814,369 kilograms
301	1,133,981 kilograms
315	4,431,475 square meters
317/326	18,700,825 square meters of which not more than 7,533,508 square meters shall be in Category 326
338/339	700,000 dozen of which not more than 477,987 dozen shall be in Categories 338-S/339-S[2]
410	1,337,804 square meters
Cotton Apparel Group:	
237, 239, 330-336 and 340-359, as a group	14,623,229 square meters equivalent
Wool Group:	
400 and 414-469, as a group	3,762,573 square meters equivalent

[1] Category 300 and in Category 607-K, all HTS numbers except 5509.52.0000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

Imports charged to these category limits for the period May 1, 1989 through December 31, 1989 shall be charged against the levels of rstraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement and the MOU dated March 3, 1989 between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28823 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Macau

December 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Government of Macau, the U.S. Government has agreed to increase the current minimum consultation levels for Categories 239, 342 and 636.

A description of the textile and apparel categories in terms of HTS number is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on Janaury 1, 1989 and extends through December 31, 1989.

Effective on December 13, 1989, the directive of December 16, 1988 is amended further to increase the limits for the following categories:

Category	Amended twelve-month limit [1]
239	100,000 kilograms.
342	42,000 dozen.
636	18,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28824 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits and Sublimits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and sublimits.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits and sublimits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits and sublimits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commission of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 6, 1989, the directive of December 22, 1988 is amended further to adjust the limits and sublimits for the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the United Mexican States:

Category	Adjusted twelve-month limit [1]
Limits not in a Group:	
336/636	216,794 dozen
340/640	435,024 dozen
341/641	860,177 dozen of which not more than 311,304 dozen shall be in Categories 341-Y/641-Y [2]

Category	Adjusted twelve-month limit [1]
347/348/647/648	4,531,500 dozen
351/651	349,869 dozen
352/652	2,943,951 dozen
604-A [3]	699,113 kilograms
604-O/607-O [4]	2,111,081 kiligrams
Non-special regime category sublimits [1]:	
340/640	108,756 dozen
347/348/647/648	544,082 dozen
351/651	52,480 dozen
352/652	1,324,778 dozen

[1] The limits and sublimits have not been adjusted to account for any imports exported after December 31, 1988.
[2] In Categories 341-Y/641-Y, only HTS numbers 6204.22.3060, 6206.30.3010, and 6206.30.3030 in Category 341-Y; and 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025 in Category 641-Y.
[3] In Category 604-A, only HTS number 5509.32.0000.
[4] In Category 604-O, all HTS numbers except 5509.32.0000; and in Category 607.0, all HTS numbers except 5509.53.0030 and 5509.53.0060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28825 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 4, 1989

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 313 and 315, the United States Government has decided to control imports in these categories for the period March 31, 1989 through March 30, 1990.

The United States remains committed to finding a solution concerning Categories 313 and 315. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is availeble in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 14986, published on April 14, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 7, 1989 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton and man-made fiber textile products in Categories 341/641 and 638/639, produced or manufactured in Thailand and exported during the period which began on March 31, 1989 and extends through March 30, 1990.

Effective on December 11, 1989, you are directed to amend the August 7, 1989 directive to include limits for cotton textile products in the following categories:

Category	Twelve-Month Limit [1]
313/11	712,810 square meters.
315/15	375,452 square meters.

[1] The limits have not been adjusted to account for any imports exported after March 30, 1989.

You are directed to amend the current counting period for Categories 313 and 315 to end on March 30, 1989.

Imports charged to the limits for Categories 313 and 315 for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances.

For imports through October 31, 1989, charges against the above restraint levels shall be 5, 889,218 square meters for Category 313 and 7,285,655 square meters for Category 315. These same quantities shall be deducted from the counting period that ended on March 30, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28821 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

The Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1990

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUMMARY: The Committee for the Implementation of Textile Agreements announces that availability of the 1990 CORRELATION, based on the Harmonized Tariff Schedule of the United States.

Copies of the CORRELATION may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Room H3100, Washington, DC 20230, ATTN: CORRELATION, at a cost of $30 per copy. Checks or money orders

should be made payable to the U.S. Department of Commerce.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28827 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Delivery Schedules.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, GSA (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offer to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 3,440; responses per respondent, 5; total annual responses, 17,200; hours per response, .167; and total response burden hours, 2,872.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0043, Delivery Schedule.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28849 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-JC-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of currently approved information collection requirements concerning Technical Proposal—2-Step Sealed Bidding.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7628.

SUPPLEMENTARY INFORMATION: a. *Purpose*: Two-step sealed bidding is a method of contracting designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps.

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approacy, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one.

The requested information is needed, in the absence of adequate specifications, to develop a sufficiently descriptive and not unduly restrictive statement of the Government's requirements and to determine the acceptability of proposals received. The contracting officer evaluates the acceptability of the information received, based on the criteria in the request for proposals.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, 3,225; responses per respondent, 1; total annual responses, 3,225; hours per response, 8; and total response burden hours, 25,800.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0041, Technical Proposal—2-Step Sealed Bidding.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28850 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-50-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an

extension of a currently approved information collection requirements concerning Bid Simple Disposition Instructions.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Firms submitting bids for Government contracts are occasionally required to submit samples of the product offered to show the characteristics of the item. When bid samples are required, bidders are requested to provide instructions for disposition of the samples after the Government has had a chance to inspect them. If no instructions are received, the samples are returned, collect to the bidder.

The information is used by the contracting office to dispose of the bid samples in the manner requested by the submitting firm.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; hours per response, .167; and total response burden hours, 1,334.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0040, Bid Sample Disposition Instructions.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28851 Filed 12–8–89; 8:45 am]

BILLING CODE 6820–JC

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Place of Performance.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) Determine bidder responsibility; (b) Determine price reasonableness; (c) Conduct plant or source inspections; and (d) Determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 79,397; responses per respondent, 14; total annual responses, 1,111,558; hours per response, .07; and total response burden hours, 77,810.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0047, Place of Performance.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28852 Filed 12–8–89; 8:45 am]

BILLING CODE 6820–JC–M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperowrk Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection regarding Descriptive Literature.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: .

a. *Purpose:* "Descriptive literature" means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

The contracting officer evaluates the information received to determine the acceptability of the product in confirming to specification and solicitation requirements, e.g., design, materials, components, and performance characteristics.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; hour per response, .167; and total response burden hours, 1,334.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202)

523–4755. Please cite OMB Control No. 9000–0039, Descriptive Literature.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28853 Filed 12–8–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Response Actions at FUSRAP Sites in Tonawanda, New York. Notice Regarding Inclusion of the Seaway Site in the Remedial Investigation/ Feasibility Study—Environmental Impact Statement for the Tonawanda Sites.

AGENCY: Department of Energy (DOE).

ACTION: Notice Regarding Inclusion of the Seaway site in the ongoing Remedial Investigation/Feasibility Study—Environmental Impact Statement (RI/FS-EIS) or 3 other Formerly Utilized Sites Remedial Action Project (FUSRAP) sites in Tonawanda, New York.

SUMMARY: Notice is hereby given that DOE as part of its FUSRAP, is considering inclusion of the Seaway site in Tonawanda, New York, in the comprehensive environmental review and analysis process which is underway for the Linde and Ashland I and II sites in Tonawanda, New York. This process, which is being conducted in accordance with the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), was initiated when DOE issued a Notice of Intent (NOI) (53 FR 11901) on April 11, 1988, that it would undertake studies to determine the nature, extent, and environmental impacts of existing radioactive contamination at the sites and to evaluate alternative response actions. Inclusion of the Seaway site is being considered primarily because of public comments received since the NOI was issued that support including the Seaway site in the total project.

The purpose of this Notice is to present pertinent background information on the RI/FS-EIS and to solicit comments and suggestions for DOE consideration of whether to expand the scope of the RI/FS-EIS to include Seaway. Federal, State, and local agencies, interested organizations, and individuals desiring to submit comments or suggestions regarding the inclusion of the Seaway site in the RI/FS-EIS are invited to do so. Comments received during the public comment period will be addressed in the environmental documents for these sites. DOE's decision on how to proceed with Seaway will be published in the **Federal Register** as well as the Tonawanda area newspapers.

DATES: We request that written comments or suggestions be provided within 30 days of the publication of this Notice.

ADDRESSES: All comments or suggestions on the inclusion of the Seaway site in the RI/FS-EIS, and general questions or comments concerning the FUSRAP project or the individual sites, should be addressed to: Peter J. Gross, Director, Technical Services Division, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8723, (615) 574–0948.

Questions specifically relating to CERCLA should be forwarded to: John Tseng, Director, Office of Environmental Guidance and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9024.

Questions specifically relating to NEPA should be forwarded to: Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background

FUSRAP was established in 1974 by the U.S. Atomic Energy Commission (AEC), a statutory predecessor of DOE. The primary objective of FUSRAP is to identify and decontaminate sites where radioactive material was handled or processed under government nuclear programs. The goals of decontamination under FUSRAP are (1) to control radioactive contamination at the sites, in compliance with applicable criteria for the protection of human health and the environment, and (2) to certify the sites are in compliance with radiological criteria and guidelines after decontamination has taken place, to the extent possible.

In April 1988, DOE issued a Notice of Intent (NOI) which initiated plans for conducting the studies necessary to evaluate the extent of, the risk from, and the method to address contamination on four FUSRAP sites in New York State. These studies would integrate the requirements of both NEPA and CERCLA, and the EIS requirements under NEPA would be incorporated into the RI/FS documents of CERCLA. The NOI indicated that DOE planned to prepare an RI/FS-EIS for the four sites: Ashland I and II, Linde, and Colonie. The analyses for these sites were being presented as a single set of documents to allow DOE to make a comprehensive evaluation of disposal requirements for the FUSRAP sites. The NOI also mentioned that a fifth site, Seaway, was being addressed by a separate, independent process. The environmental documentation for this separate process would be an Engineering Evaluation/ Cost Analysis (EE/CA) supplemented as necessary to meet the requirements of NEPA.

Both the RI/FS and EE/CA approaches are established under EPA guidelines developed for compliance with CERCLA. Both approaches identify a range of potential actions applicable to remedying the site contamination and then evaluate those options to select the most appropriate course of action. The major difference in the processes is the extent of documentation required prior to implementation. The RI/FS process is typically applied to complex analyses where many options may be applicable and many alternatives many need to be implemented to resolve all of the site's problems. The EE/CA process is used for expedited response actions where the response action process is less complex and the alternatives are more fully understood. The EE/CA process therefore leads to the selection of the response action in the shortened time frame.

The DOE reasons for proceeding with EE/CA for Seaway were stated in the NOI and are provided here for completeness. "The Seaway site is being treated independently because the scope of the response action is expected to be very limited and does not appear to have the potential to result in a significant impact. Further, the property owner's use of the site is restricted until DOE reaches a decision and implements the response action. The proposed response action would be to stablize the radioactive waste in-place. Preliminary analysis indicates that this would be suitable because of the current and future use of the site (i.e., an industrial landfill) and the very low average concentration of radioactive waste at the site."

The April 1988 NOI initiated the scoping/planning process for the RI/FS-EIS process and DOE conducted public meetings in the Town of Tonawanda and in Colonie to gather public comments, input, and concerns to be addressed during the course of the environmental review studies. At these meetings, and in subsequently submitted written comments, the citizens of the Tonawanda area, as well as local, County, State, and Federal elected officials, expressed strong concern over the potential that waste from Colonie

could be brought to Tonawanda for disposal. Congress included language in the congressional report which stated that "The conferees agree that DOE should not move or study the move of any FUSRAP waste in the State of New York to the town of Tonawanda New York." DOE has indicated that they will honor this language and has since taken action to separate the environmental review and analysis process for Colonie and the Tonawanda sites.

Following resolution of the issue of the environmental analysis and review process for Colonie, public concern, as represented to DOE, now revolves around two issues: (1) The removal of all waste from the Town of Tonawanda, and (2) the desire for an EIS on the waste in the Seaway landfill. Regarding the ultimate disposition of the contaminated material, DOE must first complete the RI/FS–EIS process to fully evaluate the impacts of applicable remedial action alternatives. To be responsive to the public's desire for an EIS related to the Seaway site, DOE is now considering incorporating the analysis of the Seaway site in the ongoing RI/FS–EIS process for the other Tonawanda FUSRAP sites. DOE has suspended the separate Seaway process and developed an approach for including the Seaway in the RI/FS–EIS for the other Tonawanda sites, pending comment from affected parties on the approach. DOE is most interested in receiving comments from the affected public, interested parties, elected officials and State and Federal agencies.

The following information provides pertinent background information related to this action including brief site descriptions and an overview of the schedule for completion of the RI/FS–EIS.

Site Descriptions

Linde Site—The Linde site is an operating manufacturing facility employing about 1,700 individuals. A portion of the site was operated for the processing of uranium from 1942 through 1948 by Union Carbide's Linde Air Products Corporation as part of a Federal research and development program for the Manhattan Engineer District. The total volume of radioactive wastes expected to be generated by decontamination of the Linde facility is estimated to be about 26,000 cubic yards. The wastes are low-activity, long-lived radioactive wastes consisting primarily of uranium contaminated soil and rubble. (For a further description of the site, see the April 11, 1988 NOI.)

Ashland I Site—The Ashland I site is a portion of the Ashland Oil Company's Tonawanda refinery which is no longer in service. The site was used for the disposal of uranium tailings generated from processing activities at the Linde facility in the 1940's. It is estimated that about 84,000 cubic yards of contaminated soil currently exist at Ashland I. (For a further description of the site, see the April 11, 1988 NOI.)

Seaway Site—The Seaway Industrial Park is an operating landfill of about 100 acres. The site is currently owned by the Seaway Industrial Park Development Co., Inc., and operated by Browning Ferris Industries (BFI), through its subsidiary Niagara Landfill, Inc. The site contains of a mound of refuse and fill material which is about 95 feet high at some points. In 1974, Ashland Oil Company transported approximately 6,000 cubic yards of radioactivity contaminated soils from the Ashland I property to the adjacent Seaway property and dumped it in three separate areas toward the northern end of the site. Area A consists of 10 acres. Area B is a small area, about 0.5 acre directly south of Area A. Area C covers about 1.5 acres in a narrow crescent shape to the southwest of Area B. Since its placement in 1974, portions of the waste residue have become buried under refuse and fill material. Areas B and C are entirely covered with up to 40 feet of material, and about 40 percent of Area A is covered by a layer of refuse that ranges up to 10 feet in depth. Because the contaminated soils move to the Seaway site have mixed with previously uncontaminated soil, it is currently estimated that the radiologically contaminated material on the Seaway site totals about 117,000 cubic yards. BFI has been requested by the New York State Department of Environmental Conservation (NYSDEC) to refrain from further covering of Area A with refuse.

Ashland II Site—The Ashland II site is separated from the Seaway site by a small strip of land owned by Niagara Mohawk. The site is not presently occupied or developed. The radioactively contaminated portion of the site is a fill area covering about 2 acres and the contamination is estimated to be about 48,000 cubic yards. (For further description of the site, see the April 11, 1988 NOI.)

Considering the contamination present at all four of the Tonawanda sites, the total waste volume is projected to be approximately 275,000 cubic yards with an estimated total curie content of less than 130 Ci.

Schedule for the RI/FS–EIS Process

Provided congressional funding for the FUSRAP is maintained at projected levels, DOE could issue a draft RI/FS–EIS and a draft Proposed Plan for the Tonawanda sites in 1992 if a final decision is made to include Seaway. These reports will be issued for a 45-day public review and comment period. Also at that time, there will be a public hearing so that oral as well as written comments can be provided on the draft documents. In 1993, DOE expects to issue the final RI/FS–EIS and Proposed Plan, which will include the response to public comments received on the draft reports. The DOE will select a remedial action alternative for each of the sites in one or more Records of Decision to be issued no sooner than 30 days after the final RI/FS–EIS is issued. If the Seaway EE/CA process proceeds independently, a response action could be selected as early as the winter of 1990.

Public participation in the environmental review and analysis process is encouraged. Public information meetings will be held when significant new phases of the work are planned (i.e., when important new information becomes available) or when community concern warrants a meeting. Fact sheets, technical reports, newsletters, and other information relating to the DOE activities at these four sites will be placed in the Kenmore Branch Library at the address noted below: Kenmore Branch Library, 160 Delaware Road, Village of Kenmore, New York 14217.

Nothing in this Notice or the documents to be prepared is intended to represent a statement on the applicability of NEPA to remedial actions under CERCLA.

Dated at Washington DC, this 5th day of December 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–28869 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center Financial Assistance Award; Intent to Award Grant to the Radian Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance (Grant) Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, the Pittsburgh Energy Technology Center intends to award a Financial Assistance Action based on an unsolicited proposal submitted by the Radian Corporation. The applicant is

entitled "The Joint Participation by the U.S. DOE in a Program to Evaluate Natural Gas Co-Firing at the Warrick Power Plant."

Scope: The objective of the proposed research effort is to:

(1) Extract the operational benefits of co-firing natural gas with coal. These benefits relate to reducing pulverizer loading, reducing start-up fuel costs, reducing the impact of slagging, reducing excess air requirements, and increasing generating capabilities without exceeding SO_2 emission requirements.

(2) Develop broadly applicable concepts for co-firing natural gas in coal-fired boilers and to evaluate those concepts in full-scale units under actual operating conditions.

(3) Perform tests on a 144 MW wall-fired boiler and a 300 MW opposed-wall, cell-fired boiler. These two differently designed utilizing scale boilers are ideal candidates for testing the potential for natural gas co-firing.

(4) The project will also quantify and document the operational benefits and the costs associated with them. Hence, a more general purpose of this transaction is the transfer of this quantified experience to the sector of the public for which it will be most useful.

(5) Co-firing is considered to be a near-term technology for reducing emissions which contribute to acid rain. If co-firing is to succeed as a near-term technology, information on its implementation must be quickly disseminated to those who could first utilize it. DOE participation in this project through this transaction will accomplish this.

Government involvement in the project will be limited to participating in project meetings, reviewing reports, and project deliverables, and recommending changes in overall technical direction and scope. DOE will not execute any decision making responsibilities or direct work activities. Given DOE's limited role in both project direction and project funding, a grant has been determined the appropriate instrument for this transaction.

The term of this grant is for a seventeen (17) month period at an estimated value of $230,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, Attention: Cynthia Y. Mitchell, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236. Telephone: (412) 892-4862.

Dated: November 29, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89-28890 Filed 12-8-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, reinstatement, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, EIA's Office of Statistical Standards (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-6
3. 1905-0167
4. Coal Distribution Report
5. Revision—The EIA proposes only minor changes to Form EIA-6. (Form EIA-6 is one of seven forms that constitute the Coal Program Package. The other six forms are the EIA-1, 3, 4, 5, 7A, and 20.) Respondents will be asked to report in calendar year 1990 by coal-producing State. Responders originally reported by coal-producing district of origin. Three states have been divided (Kentucky, Pennsylvania, and West Virginia) to maintain historical continuity of published data and to track specific coal markets supplied by parts of these three States.
6. Quarterly
7. Mandatory
8. Businesses or other for-profit
9. 1,400 respondents
10. 5,600 responses annually
11. The estimated average hours per response for each of the respondents to the EIA-6 is 2.5 burden hours.
12. The estimated total reporting hours for the EIA-6 are 14,000.
13. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 6, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-28893 Filed 12-8-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-14-000, et al.]

Duquesne Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Duquesne Light Company

[Docket No. ES90-14-000]

Take notice that on November 29, 1989, Duquesne Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to Section 204 of the Federal Power Act, to issue not more than $250 million of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date no later than December 31, 1992.

Comment date: December 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Utilities Company

[Docket No. ES90-15-000]

Take notice that on November 30, 1989, Citizens Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to Section 204 of the Federal Power Act, authorizing the issuance of short-term promissory notes during the period ending January 19, 1992, in aggregate principal amount not to exceed $100 million at any one time.

Comment date: December 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Indianapolis Power & Light Company

[Docket No. ER90-30-000]

Take notice that Indianapolis Power & Light Company on November 24, 1989, tendered an amendment to the filing made October 20, 1989 of Modification No. 8 to the Interconnection Agreement dated December 2, 1968, (the 1968 Agreement) between Indianapolis Power & Light Company (IPL) and Souther Indiana Gas and Electric Company (SIGECO). The 1968 Ageement is designated as Rate Schedule FPC No. 6.

The amended filing provides for fixed as opposed to variable energy charges in Service Schedule G to Modification No. 8 which covers specific transmission by SIGECO. A waiver of the 60-day notice requirement is requested to make Modification No. 8 effective December 31, 1989.

Copies of the amended filing were mailed to Southern Indiana Gas and Electric Company, Inc. and the Indiana Utility Regulatory Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER90-82-000]

Take notice that on November 22, 1989, Boston Edison Company tendered for filing supplements to its Rate schedules FPC Nos. 47 and 51 for service to the Town of Concord and Wellesley, Massachusetts. The supplements provide for the payment by Boston Edison to the Towns of amounts that Boston Edison estimates it will be required to refund to the Towns in Docket Nos. ER86-562-001 and ER87-581-001 as a result of the Commission's Opinion Nos. 299 and 299-A in Docket No. ER84-705-001.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the two Towns and Massachusetts Department of Public Utilities.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp, d.b.a. Utah Power & Light Company and Pacific Power & Light Company

[Docket No. ER90-83-000]

Take notice that on November 29, 1989, PacifiCorp, d.b.a. Pacific Power & Light Company and Utah Power & Light Company (Utah) tendered for filing, in accordance with 18 C.F.R. § 35.12, an Antelope Substation Capacity Entitlement, Operation and Maintenance Agreement between Idaho Power Company (Idaho) and Utah. The Agreement provides Idaho with contract rights in certain facilities located at the Antelope Substation to enable Idaho to supply electric power and energy to the Department of Energy's INEL site.

Utah requests a waiver of the Commission's notice requirements to permit the Agreement to become effective retroactively on October 17, 1989, the date of execution.

Copies of this filing were served on Idaho Power Company, Idaho Public Utilities Commission, and Department of Energy at INEL, and the Utah Public Service Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER90-84-000]

Take notice that on November 29, 1989, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of Service Schedule I to the Master Interconnection Agreement between RNM and Plains Electric Generation and Transmission Cooperative, Inc. (PGT) (PNM Rate Schedule FPC No. 31, Supplement 32).

Consistent with PGT's Notice of Termination of Service Schedule I, effective as of December 31, 1986, PNM requests waiver of the notice requirements of 18 CFR 35.15 to permit the proposed termination to be effective as of December 31, 1986.

Comment date: December 15, 1989, in accordance with Standard paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER90-85-000]

Take notice that on November 29, 1989, Southern California Edison Company (Edison) tendered for filing, the following amendment:

Amendment No. 1 to the Edison-Washington Between Southern California Edison Company and Washington Water Power Company

The Amendment revises the Agreement to comply with § 35.23 of the FERC regulations and deletes provisions regarding Recallable Energy.

The Agreement is effective as of February 1, 1989, and terminates on thirty (30) days' advance written notice by either Party.

Edison requests waiver of the notice provision under § 35.3 of the Commission's regulations. Edison further requests the assignment of an effective date of February 1, 1989, to coincide with the effective date specified in the Amendment and the Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER90-86-000]

Take notice that Duke Power Company (Duke) on November 29, 1989 tendered for filing amendments dated November 13, 1989 to Service Schedule C and Service Schedule E of the Interconnection Agreement between Duke and Yadkin, Inc. (Yadkin) dated October 17, 1983, as amended. The November 13, 1989 amendments were negotiated by the parties in order to maintain the production of aluminum at the Badin Works. Under the terms of the proposed amendment to Service Schedule C a floor and ceiling rate is established for rates to Yadkin Inc. The specific rate will vary with the price of aluminum. Service Schedule E limits the amount of energy in the Storage Energy Account.

Because Yadkin anticipates that purchases under the proposed amendments may begin as early as January 1, 1990, Duke requests an effective date of January 1, 1990.

Copies of this filing were served on Yadkin, Inc., the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28766 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-274-000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission

[Docket No. CP90-274-000]

November 30, 1989.

Take notice that on November 22, 1989, CNG Transmission Corporation (CNG) 445 West Main St., Clarksburg, West Virginia 26302-2450, filed in Docket No. CP90-274-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide transportation service for various shippers under CNG's blanket certificate issued in Docket No. CP86-311-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket Number	Shipper Customer	Commence Date	Max. Daily DT Avg. Daily DT Est. Annual DT	Receipt Point	Delivery Point or LDC
ST90-468	1. NGC Transportation, Inc.	10-5-89	10,000 735 268,275	A	H&B.
ST90-467	2. Soldiers & Sailors Memorial Hospital	11-2-89	500 96 35,040	C	North Penn.

Legend of Local Distribution Companies (LDC) or Delivery Points:
H&B—Hanley & Bird.
North Penn—North Penn Company.
Legend of Receipt Points:
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
C—Various interconnects between Texas Gas Transmission Corp. and CNG.

2. Tennessee Gas Pipeline Company

[Docket No. CP90-280-000]

November 30, 1989.

Take notice that on November 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O., Box 2511, Houston, Texas 77252, filed in Docket No. CP90-280-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Transworld Oil U.S.A., Inc. (Transworld), a marketer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 2, 1989, under its Rate Schedule IT, it proposes to transport up to 103,200 dekatherms (dt) per day equivalent of natural gas for Transworld. Tennessee states that it would transport the gas for Transworld from receipt points located offshore Louisiana and in the states of Louisiana and Texas to ultimate points of delivery located in the states of Massachusetts and New York.

Tennessee advises that service under § 284.223(a) commenced October 19, 1989, as reported in Docket No. ST90-450 (filed November 9, 1989). Tennessee further advises that it would transport 103,200 dt on an average day and 37,668,000 dt annually.

Comment date: January 8, 1989, in accordance with Standard Paragraph G at the end of this section.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–277–000]

November 30, 1989.

Take notice that on November 27, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90–277–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one new delivery point and appurtenant facilities as a jurisdictional sales facility to deliver gas to Peoples Natural Gas Company, Division of Utilicorp United, Inc. (Peoples) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to operate one delivery point to accommodate jurisdictional natural gas deliveries to the Lac qui Parle Valley School and small residential end-users in Lac qui Parle County, Minnesota to be served by Peoples. Northern states that the volumes delivered to Peoples will be served from the existing firm entitlement of Madison, Minnesota and that no reassignment of volumes will be made to Lac qui Parle from Madison. Northern further states that the estimated fifth year peak day and annual volumes are 239 Mcf and 19,700 Mcf respectively and that the end-users would be residential and school heating.

Northern asserts that the natural gas delivered at the proposed delivery point would be served from Peoples firm entitlement for delivery to Madison, Minnesota and that the total volumes delivered to Peoples would not exceed its authorized firm entitlement.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this section.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–279–000]

November 30, 1989.

Take notice that on November 27, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77002–1188, filed in Docket No. CP90–279–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Northern states that it proposes to transports, on a firm basis, up to 10,000 MMBtu of natural gas per day for Arco from a receipt point in Hemphill County, Texas, to a delivery point in Yoakum County, Texas. Northern anticipates transporting 7,500 MMBtu of natural gas on an average day and 3,650,000 MMBtu of natural gas on an annual basis. Northern also states that construction of facilities will not be required to provide the proposed service.

Northern states that the transportation of natural gas for Arco commenced on September 27, 1989, as reported in Docket No. ST90–182–000, for a 120-day period pursuant to § 284.223(a)(1) of the of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this section.

5. Tarpon Transmission Company

[Docket No. CP90–283–000]

December 1, 1989

Take notice that on November 28, 1989, Tarpon Transmission Company (Tarpon), Post Office Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP90–283–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of LL&E Gas Marketing, Inc. (LL&E), a producer of natural gas, under its blanket authorization issued in Docket No. CP88–89–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon would perform the proposed interruptible transportation service for LL&E, pursuant to a interruptible transportation service agreement dated August 25, 1989 (No. TI–88–030). The transportation agreement is effective for a primary term of one year from the date of first delivery of gas or the date on which the parties mutually agree to terminate this agreement. The agreement shall continue from month to month after expiration of the primary term unless either party terminates the agreement upon 30 days' prior written notice. Tarpon proposes to transport up to 15,330 MMBtu of natual gas on a peak day; 3,066 MMBtu on an average day; and on an annual basis 1,119,090 MMBtu of natural gas for LL&E. Tarpon proposes to transport the gas from an existing point of receipt located in Eugene Island Area (S.A) Block 381, Offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal Area, South Addition, Offshore Louisiana. Tarpon avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tarpon commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90–669–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP90–275–000]

December 1, 1989.

Take notice that on November 22, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–275–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 56.25 miles of 24-inch pipeline and appurtenant facilities in Clinton and Madison Counties, Illinois and St. Louis County, Missouri at an estimated cost of $29.4 million in order to effectuate the firm transportation of up to a maximum of 200,000 Mcf of natural gas per day for Laclede Gas Company (Laclede), a local distribution company serving the St. Louis, Missouri metropolitan area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the application is intended to be competitive with, and a partial alternative to, the application filed by Mississippi River Transmission Corporation (MRT) in Docket No. CP89–1991–000. Natural requests that pursuant to Section 385.212 of the Commission's Rules that its application be consolidated with the application filed by MRT in Docket No. CP89–1991–000. Natural states that its application offers a superior alternative for a portion of the services covered by MRT's proposal,

and should be certificated in lieu thereof.

Natural states that the facilities would interconnect its Gulf Coast Mainline at its Compressor Station 310 near Centralia, in Clinton County, Illinois, with Laclede's local distribution system at a delivery point to be located in Section 36, Township 47 North, Range 7 East, St. Louis County, Missouri (Chain of Rocks Delivery Point).

Natural states that, in recent years, portions of its pipeline system have been under-subscribed on a firm basis. To encourage utilization of the under-subscribed sections, Natural states that it has had to offer discounts, particularly in offpeak periods to maintain throughput. Portions of its system remain under-subscribed on a firm basis and Natural states this capacity would be available to Laclede subject only to the operation of Natural's first-come, first-served FTS request for service.

Natural states that its rates are sufficient to cover the cost of the new facilities and still provide a contribution to the overall cost of service. Natural states that the cost of the new pipeline to the St. Louis area would be less than the additional transportation revenues that its operation is projected to bring to Natural's system, as a whole. At the same time, Natural states that its FTS service would be considerably less expensive than MRT's firm sales service. Based on a 100 percent load factor unit rate, Natural states that savings to Laclede under its proposal amounts to $.0445/MMBtu. Natural compares MRT's non-gas cost sales rates under MRT's Rate Schedule CD–1 (100 percent load factor rate—$0.4397) to its Natural's FTS transportation rate (100 percent load factor rate—$0.3952). Natural states that it assumes that gas is received in Natural's Southern Zone and transported an average of 200 miles before entering Natural's Northern Zone, where the proposed new line and delivery point into Laclede would be located.

Natural states that MRT is currently Laclede's sole supplier and transporter of natural gas, and that certification of its proposal herein would increase competition in the St. Louis area to the overall benefit of Laclede and its customers by giving Laclede a lower cost alternative of firm transportaion in lieu of firm sales service from MRT. Moreover, Natural states that its new line would available to all manner of shipper customers in and around the St. Louis metropolitan area.

In addition to such savings, Natural states that significantly greater benefits would accrue to Laclede by purchasing gas supply directly from suppliers. Although its proposal involves the construction of a new pipeline into the St. Louis area, Natural states that Laclede could immediately augment its supply by purchasing supplies on Natural's system and shipping such gas to St. Louis via natural and the newly open access MRT system. Moreover, Natural states that the strategic location of its existing pipeline system as well as the existing or possible new interconnections between other pipelines and Natural enables gas to flow into Natural's system from nearly any supply source in the United States or Canada. Such access could, Natural avers, result in significant gas purchase cost savings to Laclede while also providing Laclede with increased gas supply security. Natural states that the proposed facilities will be financed from funds on hand.

Natural states that its application and MRT's application are mutually exclusive and duplicative, and that consolidation is the only efficient and effective method of according due consideration to the relative merits of these applications. Because of the overlapping nature of these projects, Natural moves the consolidation of its proposal with MRT's proposal in Docket No. CP89–1991–000 pursuant to § 385.212 of the Commission's Rules.

Finally, Natural states that the environmental impact resulting from the construction and operation of the facilities proposed herein will not be significant. In particular, Natural believes that certification of the proposed facilities will not be a "major federal action significantly affecting the quality of the human environment."

Comment date: December 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraph:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28767 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–289–000, et al.]

Northern Natural Gas Co., et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–289–000]

December 4, 1989.

Take notice that on November 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston,

Texas 77251–1188, filed in Docket No. CP90–289–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptive transportation service for BHP Gas Marketing Company (BHP), a marketer, under the blanket certicate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for BHP. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that services under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–243 (filed October 26, 1989). Northern further advises that it would transport 52,500 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: January 18, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–290–000]

December 4, 1989.

Take notice that on November 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–290–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for PSI. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company for the account of PSI.

Northern advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–244 (filed October 26, 1989). Northern further advises that it would transport 37,500 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: January 18, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP90–282–000]

December 5, 1989.

Take notice that on November 28, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–282–000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Reliance Gas Marketing Company (Reliance) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 40,000 MMBtu of natural gas for Reliance, with an estimated average daily quantity of 5,000 MMBtu. On an annual basis, Reliance estimates a volume of 1,825,000 MMBtu.

Transportation service for Reliance commenced October 19, 1989, under the 120-day automatic provisions of Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–295.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Trancontinental Gas Pipe Line Corporation

[Docket No. CP90–287–000]

December 5, 1989.

Take notice that on November 29, 1989, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396 Houston, Texas 77251, filed in Docket No. CP90–287–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Citizens Gas Supply Company (Citizens), a marketer of natural gas, under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport on an interruptible basis up to 345,000 dt equivalent of natural gas on a peak day, 345,000 dt equivalent on an average day and 125,925,000 dt equivalent on an annual basis for Citizens. Transco states that it would perform the transportation service for Citizens and under Transco's Rate Schedule IT. Transco indicates that it would transport the gas from receipt points located on Transco's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, New Jersey and Pennsylvania to various delivery points located in Louisiana, Texas, Georgia, South Carolina, North Carolina, Virginia, Delaware, Pennsylvania, New Jersey and New York.

It is explained that the service commenced September 30, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–173. Transco indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP90–285–000]

December 5, 1989.

Take notice that on November 29, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP90–285–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Texaco Gas Marketing, Inc. (Shipper), under its blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 51,500 MMBtu on a peak day, 51,500 MMBtu on an average day and 18,797,500 MMBtu on an annual basis. United also states that pursuant to a Transportation Agreement dated July 14, 1988 as amended on September 19, 1989 between the United and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from

points of receipt located in various counties in Louisiana and Mississippi. The points of delivery and ultimate points of delivery are located in Mobil County, Alabama, Santa Rosa and Ercambia, Florida and multiple counties in Louisiana and Mississippi.

United further states that it commenced this service on October 24, 1989, as reported in Docket No. ST90–404–000.

Comment date: January 19, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP90–295–000]

December 5, 1989.

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–295–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for The Polaris Corporation (Polaris), a local distribution company, under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 70,000 MMBtu of natural gas on a peak day, 25,000 MMBtu on an average day and 9,125,000 MMBtu on an annual basis for Polaris. Southern states that it would perform the transportation service for Polaris under Southern's Rate Schedule IT. Southern indicates that it would transport the gas from numerous receipt points to a delivery point located in Iberville Parish, Louisiana.

It is explained that the service commenced September 29, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–122. Southern indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28768 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–2–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that ANR Pipeline Company ("ANR") on November 30, 1989 tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, six (6) copies of the tariff sheet, Twenty-Sixth Revised Sheet No. 18, to be effective January 1, 1990.

Twenty-Sixth Revised Sheet No. 18 of ANR's FERC Gas Tariff, Original Volume No. 1, reflects a net decrease of .25¢ per dekatherm in one-part rates and the commodity components of the two-part rates. This decrease is the result of a decrease in the GRI Adjustment to 1.26¢ per dekatherm, as approved by the Commission in its Opinion No. 334, issued at Docket No. RP89–187–000 on October 10, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28762 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[EL90–1–000

Adirondack Hydro Development Corp.; Filing

December 5, 1989.

Take notice that on October 20, 1989, Adirondack Development Corporation (Adirondack or petitioner) submitted for filing a petition for declaratory order.[1] Petitioner intends to apply for Commission certification or the New York State Dam Project No. 7481 [2] as a so-called "small power production facility" (16 U.S.C. 796(17)(A)) to qualify for the benefits afforded to such facilities under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 8(d)(6)(e) of the Electric Consumers Protection Act of 1986 (ECPA) established a moratorium on the application of section 210 PURPA benefits to projects, such as Project No. 7481, that use new dams or diversions, with certain exceptions for pending project requests (so-called "grandfather" provisions). Projects that come within the ECPA moratorium may qualify for PURPA benefits when the moratorium ends if they meet certain environmental criteria under section 210(j) of PURPA, as amended by section 8(a) of ECPA. The petition for declaratory order requests alternative Commission findings that either Project No. 7481 qualifies under the "grandfather" provisions and therefore does not come within the moratorium, that it meets the environmental criteria section 8(a) of ECPA.[3]

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214. All such comments, protests, and motions should be filed fifteen days after Federal Register publication of this notice. In determining the appropriate action to take, the Commission will consider all protests or

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[1] On November 6, 1989, petitioner filed a supplement to its petition because petitioner will lose tax credits needed to help finance the project if petitioner fails to begin operating the project by the end of 1990.

[2] Enerco Corporation (Enerco) is the licensee for Project No. 7481. Enerco is a subsidiary of Adirondack and, at Adirondack's request, we are considering, for the purposes of the petition, the actions and statements of Adirondack to be those of Enerco.

[3] This proceeding is not intended to determine petitoner's proposed application for certification of Project No. 7481 as a small power production facility.

other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28781 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-22-000]

CNG Transmission Corp.; Proposed Changes In FERC Gas Tariff

December 4, 1989.

Take notice that CNG Transmission Corporation (CNG) on November 30, 1989, pursuant to section 13.5 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, and in compliance with Opinion No. 334, Gas Research Institute (GRI) Docket No. RP89-187, filed Fifteenth Revised Sheet No. 31 and Eighth Revised Sheet No. 32. The revised tariff sheets are being submitted to reflect the 1990 GRI funding unit of 1.26¢ per Dt. CNG requests an effective date of January 1, 1990, the effective date provided in Opinion No. 334.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28774 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-32-000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

December 4, 1989.

On November 30, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Substitute First Revision Sheet No. 7.1
Substitute First Revision Sheet No. 7.2
Substitute First Revision Sheet No. 8.1
Substitute First Revision Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on January 1, 1990.

The base tariff rates underlying Substitute First Revised Sheet Nos. 7.1 through 8.2 do not reflect implementation of CIG's settlement in Docket No. RP87-30 effective January 1, 1990. That is, the rates are at "pre-settlement" levels.[1] This, CIG states, is because the Commission has yet to act on CIG's November 17, 1989 request for clarification of the Commission's November 8, 1989 order approving CIG's settlement in Docket No. RP87-30. Should CIG receive satisfactory clarification from the Commission, and the November 8, 1989 order, as clarified, become final by December 31, 1989, CIG would restate the base tariff rates to reflect the "settlement" rates in Docket No. RP87-30 effective January 1, 1990. In addition, the PGA filing reflects a 15 cent decrease in the the Demand-1 rate and no change in the Demand-2 rate. This filing also reflects a 1.47 cent increase in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 rate schedules. The proposed rates compare with rates filed by CIG on August 1, 1989 in Docket No. TA90-1-32, which rates were accepted by Commission Letter Order dated September 29, 1989, to become effective on October 1, 1989.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28780 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Substitute First Revised Sheet Nos. 7.1 to 8.2 also reflect the new GRI charge of 1.3 cents/Mcf which was filed in Docket No. TM90-3-32 to become effective on January 1, 1990.

[Docket No. TM90-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

December 4, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1990:

One hundred forty-fourth Revised Sheet No. 16; Thirty-second Revised Sheet No. 16A2.

Columbia states that the aforementioned tariff sheets are being filed to reflect a decrease in the Gas Research Institute (GRI) funding unit to 1.26¢ per Dth as authorized by Opinion No. 334, issued by the Federal Energy Regulatory Commission (Commission) on October 10, 1989, in Docket No. RP89-187-000. Ordering Paragraph (B) of such Opinion approves the GRI funding requirement for the year 1990 and provides that members of GRI shall collect from their applicable customers a general R&D funding unit of 1.26¢ per Dth during 1990 for payment to GRI.

Copies of this filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28775 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Fourteenth Revised 37th Revised Sheet No. 8

Original Volume No. 3

First Revised Sheet No. 1039

Reason for Filing

FGT is filing the revised tariff sheets pursuant to Opinion No. 334 issued on October 10, 1989 in Docket No. RP89-187-000 by the Federal Energy Regulatory Commission (Commission) approving Gas Research Institute's (GRI) 1990 Research, Development and Demonstration Program and Five-Year Plan for 1990-1994. In Opinion No. 334 the Commission approved a GRI funding unit of 1.26 cents per dekatherm.

The proposed effective date of the tariff sheets listed above is January 1, 1990.

Copies of this filing have been served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28763 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-86-000]

Pacific Gas Transmission Co.; Change in GRI Adjustment Charge

December 4, 1989.

Take Notice that on November 29, 1989, Pacific Gas Transmission Company (PGT) tendered for filing the following sheets to its FERC Gas Tariff:

First Revised Volume No. 1

Fifth Revised Sheet No. 12

Original Volume No. 1-A

First Revised Sheet No. 4

An effective date of January 1, 1990, is proposed in accordance with Federal Energy Regulatory Commission (Commission) Opinion No. 334 in Docket No. RP89-187-000.

PGT states that this filing is made under its filed Gas Research Institute (GRI) Charge Adjustment Provision and pursuant to the Commission's Opinion No. 334 issued October 10, 1989, in Docket No. RP89-187-000. That Opinion authorizes members of the GRI to collect a general R&D funding unit of 1.26 cents per Dth of Program Funding Services for payment to GRI. This converts to 1.30 cents per Mcf. PGT further states that the change in rates will affect charges for natural gas service rendered to Pacific Gas and Electric Company under Rate Schedule PL-1 and under Rate Schedule ITS-1 to those customers who receive interruptible transportation service pursuant to section 311 of the Natural Gas Policy Act.

PGT states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory Commissions.

Any person desiring to be heard or to protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28776 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fifty-Eighth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is being filed with a proposed effective date of January 1, 1990, pursuant to the Purchased Gas Cost Adjustment provision set out in Section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Fifty-Eighth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Commission's Regulations. The Current Adjustment, which is proposed to be in effect from January 1, 1990, through March 31, 1990, reflects a decrease in jurisdictional revenues of approximately $192,000 which is attributable to a decrease in the D-1 component of $.05 per MMBtu, a decrease in the commodity component of $.22 per MMBtu, an increase in the D-2 component of Rate Schedules G-1/I-1 of $.04 per MMBtu and an increase in the D-2 component of Rate Schedules G-2/I-2 of $.01 per MMBtu from South Georgia's quarterly PGA filing in Docket No. TQ90-1-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28764 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff:

Sixth Revised Volume No. 1
Ninety-first Revised Sheet No. 4A
Tenth Revised Sheet No. 4J
Third Revised Sheet No. 3ON
Third Revised Sheet No. 3OFF
First Revised Sheet No. 45I
Original Volume No. 2
Ninth Revised Sheet No. 785
Ninth Revised Sheet No. 865
Seventh Revised Sheet No. 904
First Revised Sheet No. 6708

Southern states that the proposed tariff sheets are being filed with a proposed effective date of January 1, 1990, and track the reduction in the applicable Gas Research Institute (GRI) surcharge to 1.26¢ per MMBtu or 1.30¢ per Mcf as approved by the Commission in Opinion No. 334, issued on October 10, 1989.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure §§ 385.214, 385.211) All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28777 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Nineteenth Revised Sheet No. 50
Thirteenth Revised Sheet No. 51

Texas Eastern states that Sheet Nos. 50 and 51 are being filed pursuant to Section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, to include in Texas Eastern's rates the current GRI surcharge of 1.26 cents per dekatherm approved by the Commission in Opinion No. 334 issued on October 10, 1989 in Docket No. RP89-187-000. The GRI surcharge of 1.26 cents per dekatherm is reflected on Sheet Nos. 50 and 51.

The proposed effective date of the above tariff sheets is January 1, 1990.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28765 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM90-3-42-000, RP90-49-000 and CP88-99-008]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective December 1, 1989:

Original Sheet No. 5M

Transwestern states that the above referenced tariff sheet is being filed to (A) implement the Commission's May 11, 1988, July 29, 1988 and July 31, 1989 orders approving Transwestern's GIC, and the direct billing (or refunding, as appropriate) of all amounts properly includable within Account No. 191 upon termination of Transwestern's PGA on October 1, 1989 and (B) demonstrate compliance with § 154.306 of the Commission's Regulations with respect to the 103% Assessment Test for the period March 1, 1989 through September 30, 1989.

Through its filing, Transwestern seeks to recover through the direct billing mechanism a total of $36,397,682, including $637,251 of interest which has accrued during the period October 1, 1989 through December 1, 1989, as calculated in accordance with § 154.67(c)(2)(iii)(A) of the Commission's Regulations. The $36,397,682 million represents unrecovered amounts applicable to the period prior to October 1, 1989, plus the referenced interest. In accordance with the Commission's 1988 certificate orders, $31,192,813 represents Southern California Gas Company's proportionate share of the unrecovered amount, and $5,204,869 represents Williams Natural Gas Company's proportionate share of the under-recovered amount.

The instant filing is the first filing to be made by Transwestern to direct bill those Account No. 191 costs. As Transwestern reconciles its Account No. 191 balance, it will make subsequent filings to recover amounts Transwestern is permitted to recover in accordance with the 1988 certificate orders and the 1989 compliance filing orders, including additional interest on amounts already billed through the date of payment.

Transwestern also filed, in accordance with Section 154.306 of the Commission's Regulations, its assessment of past performance in projecting purchased gas costs for Test Interval One (March 1989 through June 1989) and Test Interval Two (July 1989 through September 1989). As shown on Schedule D-1, Transwestern's actual cost of gas for these periods is substantially below the 103% ceiling.

The proposed effective date for the tariff sheet listed above is December 1, 1989.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before December 10, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28778 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-24-000]

Equitrans Inc.; Proposed Change in FERC Gas Tariff

December 4, 1989.

Take notice that Equitrans, Inc. (Equitrans), on November 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1990.

Original Volume No. 1
- Fourteenth Revised Sheet No. 10
- Thirteenth Revised Sheet No. 14
- Third Revised Sheet No. 23

Original Volume No. 3
- Third Revised Revised Sheet No. 4
- Third Revised Revised Sheet No. 8

Pursuant to Opinion No. 334 in Docket No. RP89-187-000 issued on October 10, 1989, the Commission has authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1990 GRI unit surcharge approved by the Commission is $.0126 per Dth and $.0130 per Mcf.

Equitrans respectfully requests that the Commission accept the above-mentioned tariff sheets and grant any waiver of the regulations as may be necessary to permit such accepted tariff sheets to become effective as proposed.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28779 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-825-004]

V.H.C. Gas Systems, L.P.; Application To Amend a Blanket Certificate With Pregranted Abandonment

December 5, 1989.

Take notice that on December 1, 1989, V.H.C. Gas Systems, L.P. (V.H.C.) of 530 McCullough Avenue, San Antonio, Texas, 78215 filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder to amend its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-825-000 to authorize the sale for resale of liquefied natural gas (LNG) which it will purchase from Pan National Gas Sales, Inc. (Pan National). Pan National was granted a certificate of public convenience and necessity on November 14, 1989 in Docket No. CP89-1499-000 (49 FERC ¶ 61,199) to sell the LNG which it purchases from Sonatrading, a marketing affiliate of Sonatrach, the state oil and gas company of Algeria. V.H.C. also requests authorization for the remainder of the existing term under its current blanket sales authorization and on terms and conditions set forth in that authorization, including pre-granted abandonment, and requests expedited authorization in order to commence sales for resale by January 1, 1990, the date V.H.C. must commence firm purchases of LNG from Pan National, and any waivers or relief necessary to implement the proposal set forth herein. The application is on file with the Commission and open for public inspection.

According to V.H.C., expedited action is necessary to enable V.H.C. to compete in the spot market this winter and to sustain a sales level which is anticipated to increase due to temperature sensitive load and other factors. Additionally, V.H.C. states that it believes that it will be able to place this gas in direct sales for a limited period of time but there is no guarantee that these sales will continue for a significant period of time beyond January 1, 1990.

It appears reasonable and consistent with the public interest in this case to prescribe a period of 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for V.H.C. to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28782 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

FE Docket No. 89-62-NG]

Pacific Gas Transmission Co.; Application To Extend Existing Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to extend authority to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 12, 1989, of an application filed by Pacific Gas Transmission Company (PGT) for authorization to extend PGT's existing import authorization, which expires October 31, 1993, to allow continued importation of natural gas at the currently authorized level of up to 1,023 MMcf per day through October 31, 2005. The gas would continue to be imported under the terms of PGT's existing gas sale contract with Alberta and Southern Gas Company Ltd. (Alberta and Southern) via the import point near Kingsgate, British Columbia, and transported using PGT's pipeline

facilities through the States of Washington, Idaho, and Oregon, for delivery to PGT's only sales customer, Pacific Gas and Electric Company (PG&E) at the California border.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, notices of interventions, request for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., January 10, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: PGT currently is authorized, under DOE Opinion and Order No. 63 (Order 63), issued November 1, 1984, and 63–A (Order 63–A), issued April 2, 1985, to import up to 1,023 MMcf of Canadian natural gas per day from Alberta and Southern for the period November 1, 1985, through October 31, 1993, in accordance with the provision of a January 31, 1961 gas sales contract with Alberta and Southern as amended. PGT is a wholly-owned subsidiary of PG&E, a local distribution company supplying electric and gas service throughout most of northern and central California. Alberta and Southern is also a subsidiary of PG&E and serves as PG&E's Canadian gas buyer.

According to PGT's application, in October 1986, the Canadian National Energy Board (NEB) consolidated seven existing natural gas export licenses issued to Alberta and Southern into one consolidated license, No. GL–99, and extended the term of Alberta and Southern's export license from October 31, 1993, to October 31, 1994. The NEB approved volumes for export at the same level as PGT is authorized to import through October 31, 1993. On June 8, 1989, the NEB replaced License No. GL–99 with a new export License No. GL–111, authorizing the continued export of natural gas at the same volume levels as under License No. GL–99 for a period of eleven years beginning November 1, 1994, and ending October 31, 2005. By its gas import application, PGT is seeking to extend the term of its existing import authorization at presently authorized volume levels to correspond to Alberta and Southern's gas export authorization. The gas would be transported from the import point and delivered to PG&E using existing pipeline facilities of PGT.

PGT indicates that the terms of its renegotiated gas sales contract with Albert and Southern, which became effective November 1, 1984, would remain in effect during the extended terms of the import project. The renegotiated PGT/Alberta and Southern contract provided for a commodity rate at the international border of $2.99 (U.S.) per MMBtu subject to semi-annual review and adjustment, plus a demand charge based on actually incurred costs of transporting the gas within Canada to the export point. The renegotiated contract also reduced PGT's take-or-pay obligation from 60 percent to 50 percent of daily contract quantity and eliminated all of PGT's yearly, monthly and daily minimum purchase obligations. PGT states that under the most recent commodity price redetermination provision, which was made in early 1989, the commodity rate was set at $1.90 (U.S.) per MMBtu for the succeeding 15-month period.

In support of its application, PGT asserts that the Canadian gas which it proposes to import over the extended authorization term requested is of vital importance to the economy of northern and central California and continues to be needed to serve an established market in that area. PGT also asserts that the gas is competitive and market responsive and will remain so over the extended import term requested because of the flexibility provided by the price adjustment and redetermination provision of its gas sales contract with Alberta and Southern.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, security of supply and need for the gas as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive, needed and its gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FE 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motion to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as

necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for an oral presentation should identify the substantial question or fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a dcision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of PGT's application is available for inspection and copying from the Office of Fuels Programs Docket Room, Room 3F–056, at the above address (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 30, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–28891; Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–72–NG]

Poco Petroleum, Inc.; Application to Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 24, 1989, of an application filed by Poco Petroleum, Inc. (Poco), requesting that the blanket import authorization previously granted in DOE/ERA Opinion and Order No. 220 (Order 220), issued January 25, 1988 (ERA Docket No. 87–64–NG), be extended for two years commencing on January 21, 1990, the expiration date of its present authorization. Order 220 extended Poco's original blanket authorization to import up to 150 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery granted in DOE/ERA Opinion and Order No. 103, issued January 17, 1986.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 10, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1789.

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Poco, a wholly-owned subsidiary of Poco Petroleums Ltd., a Canadian corporation, is a Delaware Corporation that is primarily active as a marketer of natural gas in the United States. Poco requests authorization to import up to 150 Bcf of Canadian natural gas during a two-year term commencing January 21, 1990. Poco further requests authority to continue to import Canadian gas from various Canadian suppliers for its own account or as agent for Canadian suppliers and/or U.S. purchasers. The spot and short-term imported volumes would continue to be sold to a variety of U.S. customers. Poco states that existing pipeline facilities would be used to transport its gas supplies, and that it would continue to file quarterly reports giving details of the individual transactions.

In support of its application, Poco asserts that the proposed extension of the term of its existing blanket import authorization to import up to 150 Bcf is not inconsistent with the public interest. Poco states that the extension requested would allow Poco to continue to make its imported gas available to U.S. purchasers under contract terms that will be competitive in their market areas and that will remain competitive throughout the requested term of the import authority.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make

the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–28892 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders Issued During the Week of August 21 through August 25, 1989

During the week of August 21 through August 25, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

A.C.F. Trust, 08/25/89, RC272–68

The DOE issued a Supplemental Order rescinding the refund granted to A.C.F. Trust, Case No. RF272–68826 in *Mrs. Clarence Garrett, et al.*, Case No. RF272–68800, *et al.* (July 21, 1989).

Atlantic Richfield Co./Graff's Arco, Inc., 08/21/89, RF304–10117

The DOE issued a Supplemental Order concerning a Decision and Order issued on May 3, 1989 to Glow's ARCO Service *et al.* in the Atlantic Richfield Company (ARCO) special refund proceeding. As part of that Decision, a refund was granted to Graff's ARCO, Inc. (Graff's) (Case No. RF304–2622). However, both the copy of the Decision and the refund sent to Graff's were returned to the DOE, and the DOE was unable to obtain a correct address for Graff's. The refund granted to Graff's was therefore rescinded.

East Side Oil Co., 08/23/89, RF272–72241

The DOE issued a Decision and Order dismissing the Application of East Side Oil Company for a crude oil refund pursuant to the provisions of 10 CFR Part 205, Subpart V (Subpart V). The applicant had already received a refund from the Resellers' Escrow, one of the eight escrow accounts created by the Stripper Well Settlement Agreement. Under the terms of the Stripper Well escrow accounts, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, the DOE concluded that the applicant is ineligible for a Subpart V crude oil refund.

Exxon Corp./Buckner's Exxon et al., 08/23/89, RF307–0003 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $47,649.

Exxon Corp./Department of Public Utilities et al., 08/23/89, RF307–2112 et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $28,259.

Exxon Corp./Eugene Doria et al., 08/21/89, RF307–7302 et al.

The DOE issued a Decision and Order concerning 64 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a retailer of Exxon products whose allocable share is less than $5,000 or an end-user. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $51,929.

Exxon Corp./Shoals Creek Exxon, et al., 08/23/89, RF307–1815 et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $24,751.

Fieldcrest Mills, Inc., 08/24/89, RF272–6463, RD272–6463

The DOE issued a Decision and Order concerning an Application for Refund filed by Fieldcrest Mills, Inc. from the crude oil funds being disbursed by the DOE under 10 C.F.R. Part 205, Subpart V. The DOE determined that Fieldcrest's

refund claim was meritorious and granted the firm a refund of $90,984. The DOE also denied a Motion for Discovery filed by a consortium of States and rejected the States' challenge to the Fieldcrest claim. The DOE found that the industry-wide econometric data submitted by the States did not rebut the presumption that Fieldcrest was injured by the crude oil overcharges.

Fritz Blaske, 08/25/89, RA272-11

The DOE issued a Decision and Order granting a supplemental refund from crude oil funds to Fritz Blaske.The Supplemental Order adjusted Blaske's total gallonage claim listed in the Appendix to *H.G. Page & Sons, Inc., et al.*, Case Nos. RF272-66511, *et al.* (August 11, 1989). The amount of the supplemental refund is $248.

Georgia Pacific Corp. 08/24/89, RF272-153, RD272-153

The DOE granted a refund to Georgia Pacific Corporation (Georgia Pacific), a purchaser of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of thirty states and two territories of the United States (the States) filed a consolidated pleading objecting to and commenting on Georgia Pacific's application. The only evidence submitted by the States was an affidavit by the economist stating that virtually every industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. Accordingly, Georgia Pacific was granted a refund of $875,044.

Gulf Oil Corp./Crutcher Oil Co., 08/21/89, RR300-1

The DOE considered a Motion for Reconsideration filed by Crutcher Oil Company in the Gulf Oil Corporation special refund proceeding. In its original Application for Refund, Crutcher requested a refund beyond the 10 percent presumption level for consignees. The DOE found that the methodology that Crutcher had used to demonstrate its injury over-estimated its lost sales. Accordingly, Crutcher was granted a refund at the 10 percent presumption level. In the Motion for Reconsideration, Crutcher proposed a different methodology for establishing the level of injury. The DOE found that this revised methodology focused on whether there was a reduction in the consignee's sales since 1973, but failed to measure whether Gulf's actions in a particular year caused a claimant injury. The DOE found that this approach could produce an anomalous result and it was therefore rejected. The Motion for Reconsideration was accordingly denied.

Gulf Oil Corp./Jennings-Watts Oil Co., Inc., Paul Farmer, Inc., 08/23/89, RF300-5330, RF300-5460

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Jenning-Watts Oil Co., Inc. and Paul Farmer, Inc., both of which are consignees and resellers of Gulf refined products. Because the applicants were not commonly owned and were operationally distinct during the refund period, the DOE considered the applications separately in applying the appropriate presumptions of injury. The sum of the refunds granted in this Decision is $12,027.

Gulf Oil Corp./Joseph A. Hirsch et al., 08/23/89, RF300-8913 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $43,678.

Gulf Oil Corp./Plank Road Gulf et al., 08/25/89, RF300-10047 et al.

The DOE issued a Decisison and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,695.

Gulf Oil Corp./Robert C. Vaughan Dist. et al., 08/25/89, RF300-948 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $15,395.

Gulf Oil Corp./Zupin Oil Co., 08/23/89, RF300-1489, RF300-8335

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. One was submitted by Northern Oil Company, an owner of Zupin Oil Company (RF300-1489). The other was submitted by Wallace Zupin, the owner of Zupin Oil Company during the consent order period (RF300-10727). The DOE determined that Wallace Zupin was entitled to a refund for Zupin Oil Company. The total refund in this Decision is $13,237.

Murphy Oil Co./Spur Country Store, 08/24/89, RF309-1091

The DOE issued a Decision and Order denying an Application for Refund in the Murphy Oil Corporation special refund proceeding, because the applicant had already received the maximum $5,000 refund under the medium-sized retailer injury presumption for the same outlet under a different name.

Shell Oil Co./GCG Service Center et al., 08/24/89, RF315-5020 et al.

The DOE issued a Decision and Order granting 145 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $131,566.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Olympic Laundry, et al	RF272-58514	08/21/89	46	$24,550

Dismissals

The following submissions were dismissed:

Name	Case No.
Boulder Scientific Co	KFA-0308
Hicks-Westbury, Inc	RF300-5434
	RF300-5435
Kent Oil & Trading Co	RF313-174
Leemilt's Petroleum, Inc	RF313-217
Liner Exxon	RF307-984
Neuberger Oil Co	RF307-8376

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercial published loose leaf reporter system.

Dated: November 30, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-28894 Filed 12-8-89; 8:45 am]

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Issuance of Decisions and Orders Issued During the Week of September 11 Through September 15, 1989

During the week of September 11 through September 15, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John Jerry Ross, 9/14/89, KFA-0313

On August 22, 1989, John Jerry Ross field an Appeal from a determination issued to him on July 25, 1989, by the Assistant Manager for Administration, Department of Energy (DOE), San Francisco Operations Office. In that determination, the Assistant Manager denied Ross request for information filed pursuant to the Freedom of Information Act. Specifically, the Assistant Manager denied Ross request for information on the grounds that the documents sought by Ross fell within Exemption 5. In considering the Appeal, the DOE found that disclosure of the withheld documents would reveal the deliberative process of the agency and consequently inhibit open and honest communication within the agency. Therefore, the Appeal was denied.

Knolls Action Project, 9/12/89, KFA-0312

The Knolls Action Project filed an Appeal from a partial denial by the Office of Naval Reactors of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain portions of the requested documents, initially withheld under Exemption 5, consisted of reasonably segregable fatual material and should be released to the public.

Ronson Management Corp., 9/12/89, KFA-0310

Ronson Management Corporation (RMC), through its attorneys, filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request for Information which RMC had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that documents were properly withheld under Exemption 5, but that certain of the documents which were initially withheld under Exemption 4 should be released to the public. Important issues that were considered in the Decision and Order were (i) whether cost proposal information was properly withheld under exemption 4, and (2) whether information regarding a winning bidder's demonstrated experience and success, as illustrated by information concerning the bidder's past projects, was properly withheld under Exemption 4.

Refund Applictions

Atlantic Richfield Co./Jerry's Arco Service, et al., 9/12/89, RF-304-1137, et al.

The DOE issued a Decision and Order concerning sixty-seven Applications for Refund filed by claimants in the Atlantic Richfield Compnay special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $73,830, representing $55,844 in principal and $17,986 in accrued interest.

Atlantic Richfield Co./New Enterprise Stone and Lime Co., Inc., et al., 9/15/89, RF304-4998, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by claimants in the Atlantic Richfield Company special refund proceeding. As end-users, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totaling $1,650,346, representing $1,248,229 in principal and $402,117 in accrued interest.

Atlantic Richfield Co./Reamstown Arco, et al., 9/15/89, RF304-8403, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $16,769, including $4,117 in accrued interest.

Atlantic Richfield Co./Russell Gullo, Inc., et al., 9/15/89, RF304-7400, et al.

The DOE issued a Decision and Order concerning thirteen Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Each of the applicants adequately documented the volume of their purchases. All of the applicants were reseller/retailers requesting refunds of $5,000 or less. The refunds granted in this Decision totaling $9,867, representing $7,464 in principal and $2,403 in accrued interest.

Beacon Oil Co./Fred's Truck Fuels, Inc., 9/11/89, RF238-14

The DOE issued a Decision and Order concerning an Application for Refund filed by Fred's Truck Fuels, Inc. (Fred's) in the Beacon Oil Company (Beacon) special refund proceeding. Fred's documented its purchases of 1,184,524 gallons of Beacon diesel fuel. Based on these purchases, Fred's allocable share of the Beacon consent order fund totaled $18,076. The firm was also eligible to receive $26 of the total motor gasoline credit that Beacon was to pay the firm under the consent order but had not paid at the date of motor gasoline decontrol. Fred's did not attempt to demonstrate injury; thus, the firm's total refund, including credit memoranda issued by Beacon but not passed through by Fred's to its own customers, was limited to $5,000 under the small claims presumption of injury. Beacon records indicated that the firm had received a total of $2,871 in motor gasoline credit. This amount was subtracted from $5,000 to calculate Fred's refund because Fred's did not attempt to show that it had passed through the credit. The total amount of Fred's refund was therefore $5,177,

equaling $2,129 in principal and $3,048 in accrued interest.

Beacon Oil Co./Reilly's Coin-Op Car Wash, 9/12/89, RF238-87

The DOE issued a Decision and Order concerning an Application for Refund filed by Reilly's Coin-Op Car Wash (Reilly's) in the Beacon Oil Company (Beacon) special refund proceeding. Reilly's documented its purchases of 527,880 gallons of Beacon motor gasoline. Based on these purchases, Reilly's allocable share of the Beacon consent order fund totaled $8,064. However, Reilly's elected to limit its refund to $5,000 under the small claims presumption of injury. The firm's refund totaled $11,783, including $6,783 in accrued interest.

City of Fairmont, 9/13/89 272-37622

The DOE issued a Decision and Ordered granting a refund from crude oil overcharge funds to the City of Fairmont, Minnesota based on purchases of refined petroleum products made by the City's electric utility during the crude oil price control period. The applicant determined the volume of the majority of its claim by consulting contemporaneous records and estimated the remainder of its claim using a reasonable and acceptable estimation technique. In addition, the applicant certified that it would notify the appropriate regulatory agency of the refund monies received and that it would pass the entirely of the refund through to its customers. The refund granted the City of Fairmont totalled $5,136.

Crown Central Petroleum Corp./ Enterprise Products Co.; 9/13/89 RF313-197

The DOE issued a Decision and Ordered considering an Application for Refund filed in the Crown Central Petroleum Corporation special refund proceeding. Enterprise Products Company, a purchaser of Crow refined petroleum products, presented evidence that it experienced a competitive disadvantage in all of its purchases of Crown propane during the refund period. Therefore, according to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶85,326 (1988), DOE granted Enterprise a refund based on the full amount of those purchases. The total refund approved in this Decision was $266,939, representing $223,567 in principal plus $43,372 in accrued interest.

Crown Central Petroleum Corp./Siler City Oil Co., Inc., Parkway East Crown, 9/15/89 RF313-175, RF313-308

The DOE issued a Decision and Ordered considering Applications for Refund filed by two purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund appilcations were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶85,326 (1988). The total amount of refunds approved in this Decision was $9,048, representing $7,578 in principal plus $1,470 in accrued interest.

Exxon Corp./Cheaspeake Corp., 9/15/89 RF396-10057

The DOE issued a Supplemental Decision and Order to the Cheaspeake Corporation (Chesapeake) in the Exxon Corp. special refund proceeding. In *Exxon Corp./Chesapeake Corp.*, 19 DOE ¶85,322 (1989), the DOE granted Chesapeake an improper refund due to the fact that the firm had been classified as a reseller. In fact, Chesapeake was an end-user and was eligible to receive its full allocable share. Accordingly, Cheasapeake was granted a supplemental refund of $10,039 ($8,146 principal and $1,893 interest).

Exxon Corp./Hempstead'S Esso Service, Inc., 9/14/89 RF307-4535

The DOE issued a Decision and Ordered concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants, resellers of petroleum products, purchased directly from Exxon during the consent order period. Each of the applicants disagreed with the gallonage information recorded on its printout sheets and submitted alternative gallonage figures, which it requested that the OHA accept in place of or in lieu of Exxon's figures. The OHA agreed to accept the applicants' figures because they were obtained from the applicants's actual records from the consent order period. The DOE determined that each of the applicants should receive a refund equal to its full allocable share. The sum of the refunds granted in this decision was $11,830 ($9,716 principal plus $2,114 interest).

Exxon Corp./State of North Carolina, Pacific Southwest Airlines, Inc., 9/14/89, RF307-5712, RF307-5734

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Because each applicant was an end-user which purchased directly from Exxon, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $90,374 ($74,217 in principal and $16,157 in interest.)

G. Heileman Brewing Co., Inc., 9/12/89, RF272-32245, RD272-32245

A brewing company submitted an Application for Refund from crude oil overcharge funds. A group of thirty States and Territories (the States) filed identical consolidated States' Objections and Motions for Discovery in the proceeding. The States opposed receipt of any refund by Heileman and sought discovery of information in support of their opposition. The DOE determined that: (1) Heileman was presumptively entitled to a refund as an industrial end-user of petroleum products outside of the petroleum industry and had certified the volume of petroleum products it had purchased during the price control period; (2) the States had failed to rebut the presumption of eligibility; and (3) the States had failed to show that discovery with regard to Heileman's application was appropriate or that any additional information should be required of Heileman. Accordingly, Heileman's Application for Refund was granted, and the States' Objection and Motion for Discovery was dismissed.

Gulf Oil Corp., Delmarva Power and Light Co., 9/14/89, RF300-9806

The DOE issued a Decision and Order concerning an Application for Refund filed by the Delmarva Power and Light Company, a regulated public utility, in the Gulf Oil Corporation special refund proceeding. Delmarva certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The total refund amount granted in this Decision, inclusive of interest, is $69,048.

Gulf Oil Corp./Dixie Electric Membership Corp., et al., 9/14/89, RF300-10411, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $14,500.

Gulf Oil Corp./Glover Distributing Co., Inc., et al., 9/14/89, RR300-6416, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted by applicants in the Gulf Oil Corporation refund proceeding. Four of

the applicants were resellers of Gulf products and two applicants were consignees. The DOE approved all of the applications by utilizing the appropriate presumption of injury. Two of the applicants, Glover Distributing Co., Inc. and Rio Oil Company, were affiliated with each other, Glover having purchased all of Rio's assets in 1976. The DOE held that, as a corporate entity, Rio was the "individual" entitled to its refund. Accordingly, Glover, as successor owner, was entitled to receive Rio's refund for purchases prior to the 1976 transfer of ownership. The sum of the refunds granted in this Decision is $18,241.

Gulf Oil Corp. Graeber Bros. Inc. of Grenada, Et Al., 9/13/89, RF300-7225, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $28,043.

Gulf Oil Corp./Kirby's Gulf, Lanett Gulf Super Service, 9/15/89, RF300-230 RF300-230, 247

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $3,175.

Gulf Oil Corp./Meyer Oil Co., T & M Enterprises, Inc., H.K.M. III, Inc., 9/14/89, RF300-7875, RF300-8018, RF300-8019

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because all three applicants were affiliated during the consent order period, the applications were considered together for the purposes of this proceeding. One of the applicants, H.K.M. III, was denied a refund because it did not sufficiently document that it was a purchaser of Gulf products. The other two applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $6,585.

Gulf Oil Corp./Stone Container Corp., et al., 9/14/89, RF300-10480, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $32,588.

Murphy Oil Corp./Tesoro Petroleum Corp., 9/13/89, RF309-858

The DOE issued a Decision and Order granting the Application for Refund filed by Tesoro Petroleum Corporation (Tesoro) in the Murphy Oil Corporation special refund proceeding. Tesoro was found to be injured as a mid-level purchaser, based on the appropriate mid-level presumption of injury defined in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). Even though Tesoro is scheduled to make future payments to the DOE pursuant to its own consent order, the refund is being sent directly to the firm, rather than held in escrow, for the following reasons: (1) the good faith displayed by Tesoro in its timely submission of the first and largest payment of $25,000,000 (on February 23, 1989), (2) the six-year duration of the payment schedule, and (3) the small size of the refund relative to the scheduled payments. The total refund granted in this Decision was $14,609, representing $12,130 in principal and $2,479 in accrued interest.

Triple T Superette, 9/13/89, RC272-70

The DOE issued a Supplemental Order rescinding the refund granted to Triple T Superette in Paul Johnson, Inc., *et al.*, 19 DOE ¶ _____, Case Nos. RF272-69001, *et al.* (August 9, 1989). The amount of the refund rescinded was $792.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Cornell Univ., et al.	RF272-17086	13	$47,026	
Ron Elsasser, et al.	RF272-38802	34	$12,837	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Williams Oil Co.	RF313-205
Albert W. Loof, Jr.	RF272-47910
Amaudo Brothers, Inc.	RF272-70960
Amaudo Brothers	RF272-73187
	RF272-73382
Borgen Oil	RF272-45763
Bryer E. Meyer	RF272-49987
Charles B. Wise	RF272-48111
Chester Paszkiewicz	RF272-73514
Clarence B. Allen	RF272-43543
Cummings Allen	RF272-3397
Dale Perkins Oil Company	RF315-272
Daniel H. Firnstahl	RF272-42365
Delmer Sper	RF272-73712
Donald C. Smith	RF272-63145
Douglas Patterson	RF272-44693
Douglas Wilke	RF272-48921
DW Refining	RF300-2241
Edgemont Arco	RF304-4451
	RF304-8425
Frank H. Homewood	RF272-45781
Fred B. Limesand	RF272-47535
Fredericks Const.	RF272-69996
Governor's Dr. Chevron	RF300-9696
Harold Andres	RF272-49396
Hartman Hirschler	RF300-10248
Herbert Koenen	RF272-43889
Hines Truck Stop	RF304-8405
J. Harold Walters	RF272-72144
Jack W. Lowe	RF272-42351
James Parsell	RF272-49537
John R. Boose	RF272-44901
John R. Penley	KFA-0314
John Royster	RF272-48226
Jordan Lane Chevron	RF300-10247
Lehigh Acres Shell Station	RF315-2115
Leo Schwartz	RF272-61793
Leon Lyngaas	RF272-49497
Leroy Cassingham	RF300-9693
Livingston Supreme, Inc	RF313-195
Manuael McLane	RF272-47629
Merna Bros.	RF272-50735
Myron H. Byers	RF272-46793
Newport Yellow Cab Company	RF300-10864
Paul Goodell	RF272-48652
Patterson Farms	RF272-49494
Phillip Dodds	RF272-52968
R. John Thelen	RF272-44274
Richard Davison	RF272-52316
Robert D. Lukins	RF272-49842
Robert R. Moravek	RF272-43011
Rodger Hasse	RF272-47592
State Line Oil, Inc.	RF300-10087
Thomas M. Walters	RF272-72257
Triangle Arco Service	RF304-8892
Vonnie Bartlett	RF272-43130
Walt's Arco	RF304-7494
Washington Street Exxon	RF307-1924
West Newton Shell, Inc.	RF315-3391
Westside Cab Company	RF300-10863
Wilburn Panzier	RF272-68247
William Arterburn	RF272-57660
William Schley	RF272-47832

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 30, 1989.

George B. Brezney,

Director, Office of Hearings and Appeals.

[FR Doc. 89–28895 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL 3695–9]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50 (41 FR 52688). The new designated method is identified as follows:

RFNA–1289–074, "Thermo Environmental Instruments Inc. Model 42 Chemiluminescence $NO/NO_2/NO_x$ Analyzer," operated on the 0–0.05* ppm, the 0–0.1* ppm, the 0–0.2* ppm, the 0–0.5 ppm, or the 0–1.0 ppm range, with any time average setting from 10 to 300 seconds. The analyzer may be operated at temperatures between 15° and 35° C and at line voltages between 105 and 130 volts, with or without any of the following options:

42–002 Rack Mounts
42–003 Internal Zero/Span and Sample Valves with Remote Activation
42–004 Sample/Ozone Flowmeters
42–005 4–20 mA Current Output
42–006 Pressure Transducer
42–007 Ozone Particulate Filter
42–008 RS–232 Interface
42–009 Permeation Dryer

*Note: Users should be aware that designation of the analyzer for operation on ranges less than 0.5 ppm is based on meeting the same absolute performance specifications required for the 0–0.5 ppm range. Thus, designation of these lower ranges does not imply commensurably better performance than that obtained on the 0–0.5 range.

This method is available from Thermo Environmental Instruments Inc., 8 West Forge Parkway, Franklin, Massachusetts 02038. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 54, July 27, 1989, page 31247.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although the may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained

from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89–28876 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3695–6]

Chesapeake Bay Program; Public Meeting

A public meeting to review a draft Workplan for development of the Chesapeake Bay Toxics of Concern List will be conducted from 3:15 to 5 p.m. Monday, December 18, 1989, in the Kimball Conference Center of the National Wildlife Federation, 1400 16th Street NW., Washington, DC.

The Toxics of Concern List, an element of the Chesapeake Bay Basinwide Toxics Reduction Strategy, is to be completed by March 1990. The primary purpose of the Toxics of Concern List is to identify key toxic pollutants adversely impacting the Chesapeake Bay or with the potential to do so.

The proposed Workplace describes the overall objectives of the Toxics of Concerns List and outlines procedures to be followed in its development. The Chesapeake Bay Program Toxics Subcommittee is inviting public review and comment on the Workplace before it is put into practice.

The public review of the Workplan will follow the quarterly meeting of the Citizens Advisory Committee on the Chesapeake Executive Council scheduled for 10 a.m. to 3 p.m. December 18 at the same location. The Committee meeting is open to the public.

For further information about the public meeting, contact Tamara Vance, Alliance for the Chesapeake Bay, at 804/225–4355. For a copy of the proposed Workplan, call Ann Berger at 301/377–6270.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 89–28877 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010825A–002.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement amends the crane assignment agreement (Agreement 224–010825A) to provide Evergreen with five five-year crane assignments at Berths 227–236 at the Port of Los Angeles' Seaside Terminal and to allow Evergreen the use of certain substitute cranes on an interim basis.

By Order of the Federal Maritime Commission.

Dated: December 5, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28743 Filed 12–8–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Yugoslavia/United States Discussion

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011264–001

Title: Yugoslavia/United States Discussion Agreement.

Parties:

Nedlloyd Lines, B.V.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would add Evergreen Marine Corporation (Taiwan) Ltd., Jugolinija, Lykes Bros. Steamship Co., Inc. and Sea-Land Service, Inc. as parties to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 5, 1989.

[FR Doc. 28–28785 Filed 12–8–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D–0470]

Frozen Dessert Processing Guidelines; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its "Frozen Dessert Processing Guidelines." FDA has developed these guidelines for use by industry, FDA, and State regulatory personnel to improve the safety and quality of frozen desserts and to assist in setting action priority recommendations when problems occur. FDA believes that adherence to these guidelines will better assure protection of the health and safety of consumers.

ADDRESSES: Submit written requests for single copies of "Frozen Dessert Processing Guidelines" to the Center for Food Safety and Applied Nutrition, Division of Cooperative Programs (HFF–340), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the Division in processing your requests. "Frozen Dessert Processing Guidelines" is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven Sims, or Johnnie Nichols, Center for Food Safety and Applied Nutrition (HFF–340), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: In October 1988, FDA completed an intensive review of the dairy industry. This review was precipitated by reports of outbreaks of various illnesses related to a number of dairy products between 1982 and 1985. As part of FDA's review, almost 600 frozen dessert and frozen dessert mix manufacturing plants were evaluated. Finished product samples in over 3 percent of these plants were found to contain pathogens such as *Listeria monocytogenes.* Contaminated products included ice cream, ice milk, dairy and nondairy novelties, as well as packaged mixes.

FDA developed these frozen dessert processing guidelines to assist State and local regulators, FDA investigators, and industry quality control personnel in reducing or eliminating pathogens and other forms of contamination in these products. The guidelines are intended for firms that assemble, pasteurize, dry, freeze, or package frozen desserts or frozen dessert mixes. The guidelines are applicable to the manufacture of mixes and finished products such as ice cream, frozen custard, goat's milk ice cream, ice milk, goat's milk, mellorine, sherbert, water ices, frozen yogurt, shake mixes, and other similar frozen dessert products, including frozen desserts consumed on interstate conveyances.

In developing these guidelines, FDA utilized current good manufacturing practice in manufacturing, packing, or holding human food (21 CFR Part 110), FDA's "Guidelines for the Prevention of Environmental Contamination," "Pasteurized Milk Ordinance (PMO)," the International Ice Cream Association's "Product Assurance Safety System (PASS) Manual," and "Principles and Guidelines for Frozen Dessert Novelty Equipment."

The guidelines are being made available under 21 CFR 10.90.

Dated: December 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28819 Filed 12–8–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0482]

Nutritional Therapy and Nutrition Education in Care and Management of AIDS Patients; Announcement of Study, Request for Scientific Data and Information, Tentative Report, and Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is preparing a report on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with acquired immunodeficiency syndrome (AIDS). FASEB is inviting written submission of scientific data and information on all aspects of the nutritional support of persons with AIDS. In addition, FASEB will make its tentative report publicly available in April 1990. FDA and FASEB invite written comments on that tentative report. Interested persons and organizations with questions regarding this study are invited to communicate with the LSRO contact persons listed below.

DATES: Scientific data and information should be received by January 31, 1990; the tentative report will be publicly available on or before April 2, 1990; written comments on the tentative report should be received by June 1, 1990; and further information on these dates and any extensions thereof will be available from the addresses indicated below.

ADDRESSES: Submit scientific data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Send two copies of all information to each office. Submit requests for single copies of the tentative report to the LSRO. Written comments on the tentative report should be submitted to the LSRO and to the Dockets Management Branch. Scientific data and information, the tentative report, and comments that are received on the tentative report will be available for public examination at the LSRO and the Dockets Management Branch. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, or Susan M. Pilch, Life Sciences Research Office, Federation of American Societies for Experimental Biology 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

FDA is announcing that it has asked the LSRO of FASEB, as a task under the contract, to secure information on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with AIDS. FASEB will use this information to prepare a report for the interested scientific community and the public. The agency anticipates that this report will be useful as a basis for nutrition education in the clinical management of patients with AIDS.

The clinical course of AIDS varies, but its manifestations include many symptoms that affect food intake and nutritional status: Oral and esophageal lesions may make eating painful; fever may increase caloric requirements; nausea and vomiting may limit food intake; and intestinal infections, lesions, and other conditions may cause malabsorption and diarrhea. In addition, various drug treatments may interfere with nutrient absorption or metabolism. These factors contribute to the weight loss, various forms of malnutrition, and severe metabolic wasting that cause debilitation in many patients with AIDS.

Topics related to the nutrition care and management of pediatric, adolescent, and adult patients with AIDS that will be considered in this study include, but are not limited to, the following: The roles of nutrition and specific nutrients in immune function and resistance to infection as they may affect disease progression in AIDS; manifestations of AIDS that affect nutritional status; the etiology of malabsorption in AIDS; the etiology of metabolic wasting in AIDS; general nutritional recommendations for persons infected with human immunodeficiency virus (HIV) (including asymptomatic persons); and nutritional support recommendations for patients with gastrointestinal and other manifestations of AIDS.

This notice invites submission of scientific information and data that should be considered in developing the report on current theories and practices concerning the role of nutritional support in the care of patients with AIDS. Two copies of any comments, data, and information should be submitted to both FDA's Dockets Management Branch and the Life Sciences Research Office of FASEB (address above). The deadline for receipt of such submissions is January 31, 1990.

FASEB will make publicly available on or before April 2, 1990, its tentative report on nutritional therapy and nutritional education in the care and management of patients with AIDS. Interested persons are invited to submit written comments on the tentative report by June 1, 1990. Pursuant to its contract with FDA, FASEB will provide the agency with a final scientific report on these issues on or before September 28, 1990.

Dated: December 5, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28820 Filed 12-8-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-908]

Acting Secretary of Housing and Urban Development; Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Secretary of Housing and Urban Development is not available to exercise the powers and perform the duties of the Secretary, appointees to the positions listed below are authorized to act as Secretary and exercise all the powers, functions, and duties assigned to or vested in the Secretary, Exec. Order No. 11274, 3 CFR 537 (1966-70 Comp.). However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. Under Secretary
2. General Counsel
3. Assistant Secretary for Housing-Federal Housing Commissioner
4. Assistant Secretary for Community Planning and Development
5. Assistant Secretary for Policy Development and Research
6. Assistant Secretary for Administration
7. Assistant Secretary for Legislation and Congressional Relations
8. Assistant Secretary for Fair Housing and Equal Opportunity
9. Assistant Secretary for Public Affairs
10. Assistant Secretary for Public and Indian Housing

In the event of a national security emergency and none of the officials named above is able to act, appointees to the positions listed below are authorized to act as Secretary and exercise all powers, functions, and duties assigned to or vested in the Secretary. Exec. Order No. 12656, 3 CFR 585 (1989 Comp.). However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. President, Government National Mortgage Association
2. Deputy Under Secretary for Field Coordination
3. Deputy Under Secretary for Intergovernmental Relations
4. Regional Administrator, Region I (Boston)
5. Regional Administrator, Region II (New York)
6. Regional Administrator, Region III (Philadelphia)
7. Regional Administrator, Region IV (Atlanta)
8. Regional Administrator, Region V (Chicago)
9. Regional Administrator, Region VI (Fort Worth)
10. Regional Administrator, Region VII (Kansas City)
11. Regional Administrator, Region VIII (Denver)
12. Regional Administrator, Region IX (San Francisco)
13. Regional Administrator, Region X (Seattle)

This designation supersedes the designation effective July 2, 1985, published July 11, 1985 (50 FR 28269).

Authority: Executive Order 11274, 31 FR 5243, 3 CFR 537 (1966-70 Comp.); Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 12656, 53 FR 47491, 3 CFR 585 (1989 Comp.).

Effective Date: This order is effective November 8, 1989.

Jack Kemp,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89-28787 Filed 12-8-89; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-89-2090]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of

the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Quality Control Plan for Approved Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Mortgage Letter establishes minimum requirements for an acceptable Quality Control Plan for HUD-FHA approved mortgages with respect to loan origination and servicing. The requirements are intended to improve the quality of loan origination and servicing by approved mortgages and to reduce losses to HUD's insurance fund.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Buinesses or Organizations.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,200		1		40		48,000

Total Estimated Burden Hours: 48,000.

Status: New.

Contract: Andrew Zirneklis, HUD, (202) 755-6924, John Allison, OMB, (202) 395-6880.

Dated: December 4, 1989.

[FR Doc. 89-28789 Filed 12-8-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Mr. Dale Converse, PRT 744277, Sumner, IA.

The applicant requests a permit to purchase in interstate commerce two pairs of nene geese (*Nesochen (=Branta) sandvicensis*) from Rex Lamb, Carrollton, Missouri, and Van Halzen Farms, Grants Pass, Oregon, for the purpose of propagation.

Applicant: Mr. Jesse Warren, PRT 744421, Suches, GA.

The applicant requests a permit to purchase in interstate commerce two pairs of nene geese (*Nesochen (=Branta sandvicensis* from Bob Blankenship, Redding, California, for the purpose of propagation.

Applicant: Colorado State University—LCTA Lab., PRT 744554, Fort Collins, CO.

The applicant requests a permit to collect plant material from *Haplostachys haplostachya* var., *Stenogyne angustifolia* var., *angustifolia*, and *Lipochaeta venosa* in Pohakula Training area, Endangered Plant Habitat, Hawaii, for the purpose of scientific research on reproductive biology, genetics, and propagation.

Applicant: Environmental Science Associates, PRT 744294, San Francisco, CA.

The applicant requests a permit to live-trap salt harvest marsh mice (*Reithrodontomys raviventris*) in Palo Alto Baylands marsh, San Mateo County, California, to determine presence, distribution, habitat preference, and abundance. Any mice trapped will be sexed, tagged, and immediately released.

Applicant: Columbus Zoological Gardens, PRT 744553, Powell, OH.

The applicant requests a permit to import blood and skin biopsies from two male and two female pygmy chimps (*Pan paniscus*) as part of a pre-shipment health physical. The chimps are presently held at the Limburgse Zoo, Belgium, and the Columbus Zoo has applied for an import permit under PRT 743076, to import these chimps for zoological display and propagation.

Applicant: Pacific Gas & Electric Company, PRT 744835, San Ramon, CA.

The applicant requests a permit to conduct the following take activities with bald eagles (*Haliaetus leucocephalus*) in Shasta County, California, for purposes of research, management and monitoring of a resident population: capture, band, and attach telemetry transmitters, survey, repair nests, collect eggshell fragments and egg materials and draw blood.

Applicant: U.S. Fish and Wildlife Service, PRT 676811, Region 2, Albuquerque, NM.

The applicant requests an amendment and renewal of their existing permit to take various wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery plans, listing or other Service work for those species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 432, 4401 N. Fairfax Drive, Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 6, 1989.

Karen Wilson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-28888 Filed 12-8-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AK-060-00-4111-10

Request for Public Comments on Competitive Leasing; National Petroleum Reserve in Alaska (NPR-A); Correction

The text of the **Federal Register** Notice of November 3rd, 1989 (54 FR 46474-46475) is complete in its entirety. However, the paragraph numbering is incorrect. Paragraph number 5 is correctly number 3 and paragraph number 6 is correctly number 4.

In addition, the final date for public comment is extended to December 31, 1989.

ADDRESS: Direct written questions and responses to: M. Thomas Dean, Arctic District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Donald C. Meares, Natural Resource

Specialist, at the address given above or telephone 907/474–2306.

M. Thomas Dean,

Manager, Arctic District.

[FR Doc. 89–28859 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–84–M

[OR–933–00–4333–02: GP00–029]

Establishment and Availability of Proposed Boundaries, National Wild and Scenic Rivers System, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the establishment and the availability of proposed boundaries for river segments designated by the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

The proposed boundaries for the following designated wild, scenic and/or recreational rivers have been established by the Bureau of Land Management: Crooked (2 segments), Deschutes (2 segments), Donner und Blitzen, Grande Ronde, John Day, North Fork Crooked, North Fork Owyhee, Powder; Quartzville Creek, Salmon, Sandy, South Fork John Day, West Little Owyhee, White.

FOR FURTHER INFORMATION CONTACT: Ken White, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–2113.

The proposed boundaries for the Grande Ronde, North Fork Crooked, Salmon and White wild and scenic rivers include contiguous segments under the administration of the Forest Service, USDA.

The proposed boundaries are available for public inspection at the following office locations:

Bureau of Land Management

Headquarters Office, Room 3360, Main Interior Building, 1800 C Street, NW., Washington, DC.
Oregon State Office, 825 NE. Multnomah Street, Portland, Oregon 97208
Burns District Office, HC 74–12533, Hwy. 20 West, Hines, Oregon 97738
Prineville District Office, 185 East Fourth Street, Prineville, Oregon 97754
Salem District Office, 1717 Farby Road SE., Salem, Oregon 97306
Vale District Office, 100 Oregon Street, Vale, Oregon 97918

Forest Service

Ochoco National Forest (N.F. Crooked Wild and Scenic River), 155 N. Court, Prineville, Oregon
Mt. Hood National Forest (Salmon and White Wild and Scenic Rivers), 2955 NW. Division Street, Gresham, Oregon 97030
Umatilla National Forest (Grande Ronde Wild and Scenic River), 2517 SW. Hailey Avenue, Pendleton, Oregon 97801
Wallowa-Whitman National Forest (Grande Ronde Wild and Scenic River), 1550 Dewey Avenue, Baker, Oregon 97814

Dated: October 25, 1989.

Paul Vetterick,

Acting Oregon State Director.

[FR Doc. 89–28744 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–33–M

[AA–340–00–4333–11]

Recreation Concession Leases and Vendor Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability—Recreation Concession Leases and Vendor Permits Manual.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice to making available a new Manual concerning recreation concession leases and vendor permits on BLM administered public lands and related waters.

DATE: Effective December 11, 1989.

ADDRESS: Send requests for copies to Director (340), Room 3360, Main Interior Building, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation and Cultural Resources Branch, (202) 343–9353.

SUPPLEMENTARY INFORMATION: This Manual makes use of existing authorities, regulations, and policies with respect to the issuance of recreation concession leases and vendor permits. It was developed as a direct result of field requests, in furtherance of BLM's multiple-use mission, in accordance with the Implementation Plan for Recreation 2000, and in order to consolidate program guidance into one document. Goals enhanced by this Manual include, but are not limited to: (1) Encourage private sector investment in expanding the range of outdoor recreation opportunities to the public; (2) Protect public health, safety, and reduce conflicts among users; (3) Assist in the management of limited natural resources and opportunities by controlling recreation use; and (4) Ensure the public is provided a full range of recreation facilities, services, and opportunities while recovering a free market value for the use of the National Public Lands and related waters.

In addition, it also supplements other BLM Manuals and Handbooks, e.g., BLM 1323 Manual—Cost Recovery For Reimbursable Projects/Activities; BLM 2920 Manual—Leases, Permits, and Easements; BLM 8372 Manual—Special Recreation Permits; and BLM Handbook H–8372–1—Special Recreation Permits For Commercial Use.

Dated: November 28, 1987.

Michael J. Penfold,

Acting Deputy Director.

[FR Doc. 89–28745 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–00–4214–11; Nev–054505]

Proposed Continuation of Withdrawal; Nevada

November 30, 1989.

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The Corps of Engineers, on behalf of the U.S. Air Force, proposes that a withdrawal comprising 15,010.32 acres for the Wendover Air Force Range continue for an additional 25 years. The lands will remain closed to surface entry and mining, but will be opened to mineral leasing.

DATE: Comments should be received by March 8, 1990.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–328–6326.

The Corps of Engineers, on behalf of the U.S. Air Force, proposes that the existing land withdrawal made by Public Land Order 627, be modified and continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 32 N., R. 69 E.,
Sec. 12, a portion of the E½SE¼;
Sec. 13, a portion of the E½;
Sec. 24, All.
T. 32 N., R. 70 E.,
Sec. 3, Lots 1–6, S½NW¼, SW¼;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1, 2, S½NE¼, SE¼, a portion of Lot 3, SE¼NW¼, E½SW¼;
Sec. 7–9, All;

Sec. 10, Lots 1–4, W½;
Sec. 15, Lots 1–4, W½;
Secs. 16–21, All;
Sec. 22, Lots 1–4, W½.
T. 33 N., R. 70 E.,
Sec. 15, Lots, 14, 16, 19, 21, W½SW¼, a portion of Lot 22, SE¼SW¼;
Sec. 16, Lots 2, 3, 5, 8, 10, 12, SE¼SE¼;
Sec. 20, Lots 1, 4, 5, 7, 10, 12, SE¼SE¼;
Sec. 21, Lot 1, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 22, W½, a portion of Lots 1 and 4;
Sec. 27, Lots 3, 4, W½, a portion of Lots 1 and 2;
Sec. 28, All;
Sec. 29, Lots 1, 4, 6, 7, E½, NE¼SW¼, S½SW¼;
Sec. 30, a portion of E½SE¼;
Sec. 31, E½SE¼, a portion of NE¼NE¼, S½NE¼, W½SE¼;
Secs. 32–33, All;
Sec. 34, Lots 1–4, W½;

The area described aggregates 15,010.32 acres in Elko County.

The withdrawal was originally established for the use of the military in connection with the Wendover, Utah, Army Airbase. The land is currently used for a safety and buffer zone for a common-use airfield. It is also proposed to use the area as a staging base, and to construct a new segment of runway and support facilities. The withdrawal segregates the land from operation of the public land laws generally, including the mining and mineral leasing laws. A change is proposed to reduce the segregative effect of the withdrawal by opening the lands to application under the mineral leasing laws. Mineral leases will not be approved without the concurrence of the U.S. Air Force. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawal may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89–28784 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Adams National Historic Site, Quincy, MA; Public Review Period for Land Protection Plan

In accordance with the Department of the Interior's Policy for the preparation and revision of Land Protection Plans (47 FR 19784), notice is hereby given that the National Park Service is revising the 1984 Land Protection Plan for Adams National Historic Site. A draft document is available for review from the Superintendent beginning December 15, 1989. Comments on the draft document should be submitted in writing by January 31, 1990, to the Superintendent, Adams National Historic Site, 135 Adams Street, P.O. Box 531, Quincy, Massachusetts 02269. The National Park Service prepares and periodically revises Land Protection Plans for each unit in the National Park System containing non-Federal or interest in land within its authorized boundary.

Dated: December 4, 1989.

Marie Rust,

Acting Regional Director.

[FR Doc. 89–28857 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Research Advisory Committee; Meeting Cancellation

Notice is hereby given of the cancellation of the A.I.D. Research Advisory Committee meeting scheduled for December 14–15, 1989. (Published at 54 FR 50029, Dec. 4, 1989).

Dated: November 29, 1989.

[FR Doc. 89–28846 Filed 12–8–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Address of Principal Office: USG Corporation, 101 South Wacker Drive, Chicago, Illinois 60606–4385

2. Wholly-Owned Subsidiaries Which Will Participate in the Operations and Addresses of Their Principal Offices:

Corporation and principal office address	Incorporated in
(a) United States Gypsum Company, 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(b) DAP, Inc., 855 North Third Street, Tipp City, Ohio 45373–3014.	Ohio.
(c) USG Interiors, Inc., 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(d) L&W Supply Corporation, 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(e) Stocking Specialists, Inc., 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28749 Filed 12–8–89; 8:45 am]

BILLING CODE 7035–01–M

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.-Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–19539, filed October 24, 1989. NEW YORK AIRBUS, LTD. (Airbus) (30 Mahan Street, West Babylon, NY 11704)—PURCHASE—CLAUSEN BUS SERVICE, INC. (Clausen) (168–27 Baisley Boulevard, Jamaica, NY 11434). Applicants' representative: Gerald K. Gimmel, 444 North Frederick Avenue—Suite 200, Gaithersburg, MD 20877.

Airbus, a noncarrier corporation, seeks approval to acquire the assets (including the operating authority in Certificates No. MC–144471 (Sub-Nos. 1F and 2)) of Clausen. These latter certificates collectively authorize irregular-route motor common carrier service in the transportation of passengers, in charter and special operations, between points in the United States (except Hawaii).

Mr. Thomas G. Moonis and Mr. George Semke, noncarrier individuals, each own 50 percent of the stock of Airbus, CBS Bus Service, Inc. (CBS Service), CBS Bus Lines, Inc. (CBS Bus), and Harran Transportation Co., Inc. (Harran) (MC–40615). CBS Service, a noncarrier corporation, presently has pending an application in No. MC–F–19510 pursuant to which it seeks approval for the purchase of the assets, including the operating authority, of Coram Bus Service, Inc. (MC–165988). This latter authority encompasses the irregular-route motor common carrier transportation of passengers, in charter and special operations, between points in the United States (except Hawaii). Mr. Moonis and Mr. Semke presently have pending an application in No. MC–F–19510 in which they seek approval for their continuance in control of CBS Bus, upon CBS Bus' obtaining the initial motor common carrier authority it is presently seeking in No. MC–223305 which would authorize the transportation of passengers, in charter and special operations, between points in the United States (except Hawaii). Harran holds motor common carrier authority to transport: (1) Passengers, over irregular routes, in charter and special operations, between points in the United States; (2) passengers, in regular-route operations, between Bay Shore and Hauppauge, NY, and Atlantic City, NJ, over described routes, serving specified intermediate points; and (3) shipments weighting 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States. Harran also holds motor contract carrier authority to transport passengers, in special operations, beginning and ending at points in Queens, Nassau, and Suffolk Counties, NY, and extending to points in the United States, under continuing contract(s) with Resorts International, Inc., of Atlantic City, NJ.

Airbus has been granted temporary authority in No. MC–F–19539 TA to lease Clausen's above-described operating rights pending disposition of the instant finance application.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28750 Filed 12–8–89; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for license to export special nuclear material for a nuclear reactor as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Material in kilograms			End use	Country of destination
	Material type	Total element	Total isotope		
Transnuclear, Inc., 11/27/89, 11/29/89, XSNMO2491.	93.45% enriched uranium	38.291	35.783	Fuel for HRF Petten Reactor	The Netherlands.

Dated this 4th day of December 1989 at Rockville, Maryland.

C.N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 89–28854 Filed 12–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–417]

System Energy Resources, Inc., et al., Grand Gulf Nuclear Station, Unit 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Construction Permit No. CPPR–119 issued to System Energy Resources, Inc., (SERI) acting for itself and as agent for South Mississippi Electric Power Association (SMEPA), and Mississippi Power & Light Company, for construction of the Grand Gulf Nuclear Station, Unit 2, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change construction permit conditions to authorize the control and performance of licensed activities for Grand Gulf by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 21, 1989, as supplemented September 27 and November 21, 1989.

The Need for the Proposed Action

The SERI proposes to transfer the control and performance of licensed activities for Grand Gulf 2 to Entergy Operations, Inc. The proposed construction permit conditions will assure that SERI and SMEPA will continue in their present capacity as owners of Grand Gulf 2. The transfer to Entergy Operations, Inc. entails the transfer of SERI staff involved in nuclear activities from SERI to Entergy Operation, Inc. All staff responsible for Grand Gulf will continue after the amendment as before. There will be no physical changes associated with this amendment other than the change in

name only (to Entergy Operations, Inc.) of the nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the construction permit. The proposed changes would allow SERI to transfer the construction and management responsibilities for Grand Gulf 2 to Entergy Operations, Inc. The construction and management staff of SERI associated with Grand Gulf 2 will transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the amendment. SERI and SMEPA will continue as owners of the facility. Accordingly, the Commission concludes that this action would result in no significant radiological or non-radiological environmental impact.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2, dated September 1981.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 21, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 5th day of December 1989.

E.G. Tourigny,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28839 Filed 12-8-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27498; File No. 4-281]

Joint Industry Plan; Notice of Filing of an Amendment to the Consolidated Tape Association Plan To Introduce a New, Consolidated Form of Vendor/Computer Input User Agreement

The participants in the Consolidated Tape Association ("CTA") plan on October 16, 1989, submitted amendments to the restated CTA plan created pursuant to Rule 11Aa3-1(b)(2) and Rule 11Aa3-2(b) under the Securities Exchange Act of 1934 ("Act").[1]

I. Description of the Amendment

The purpose of the amendment is to implement a new, consolidated form of the vendor/computer input user agreements, which restates and consolidates into one form (the "Consolidated Form") the existing vendor agreements to: (1) Reduce paperwork; simplify and accelerate application processing; facilitate the administration of vendor and computer input agreements; and eliminate duplicative effort; and (2) improve the content of existing vendor agreements and addenda by eliminating provisions redundant of other protections afforded by the Consolidated Form or of statutory and common law protections and by substituting generic requirements for detailed specifications and proscriptions; and by reworking the language in general to make the agreement easier to read and understand.

A. Approach of the Consolidated Form

Section VIII of the plan requires the plan participants to enter into contracts with each vendor and computer input user ("Contracting Party" of "Contracting Parties") to govern the receipt of access to, and use of, last sale or quotation information, as appropriate. Since the adoption of the plan, the participants have fulfilled that obligation by evolving two series of agreement forms: One series for (i) the receipt of last sale and quotation information over the high speed line, (ii) the receipt of Network A last sale information over the low speed line and (iii) the use of Network A last sale and quotation information; the other for (i) the receipt of Network B last sale information over the low speed line and (ii) the use of Network B last sale and quotation information.Contracting Parties receive and use last sale and quotation information for the purposes described in Section VIII of the plan pursuant to those agreements ("Existing Vendor Agreements").

Historically, the NYSE and the Amex have specifically tailored each Existing Vendor Agreement to meet the specific services and requirements of each Contracting Party. The evolutionary nature of those agreements, and the need to tailor them on a case-by-case basis, were in large part a function of the ever-changing technologies in the market data community. In creating the Consolidated Form, the participants have taken a different approach.

The objectives of the new approach are: (1) To enable each Contracting Party to satisfy the plan's contract requirements by entering into only one agreement with the participants for all purposes of the plan and (2) to develop one standard form of agreement that applies for all Contracting Parties, no matter what technologies or means of receipt may be used. As a result, the participants have attempted to create a contract form that addresses all foreseeable contract variables associated with the many aspects of the receipt and use of market data, even though one or more of the Consolidated Form's provisions may not apply in the context of a particular Contracting Party. The participants have used several devices in developing this universal form:

(1) *Exhibit A*—Existing Vendor Agreements already require the Contracting Party to describe the manner in which it receives, uses and safeguards market data in Exhibit A. The Consolidated Form will place greater emphasis on the content of Exhibit A. Contracting Parties will have to include more information and more detailed descriptions so that vendor-specific information will no longer have to be incorporated into the body of the agreement.

(2) *Exhibit B*—The participants recognize that the Consolidated Form cannot anticipate the many new technologies and other developments that are likely to surface. In addition, in the interest of keeping the Consolidated Form to a manageable length, the participants have determined to omit from the body of the Consolidated Form provisions governing certain infrequent uses of market data (*e.g.*, provisions governing public displays and participant-supplied equipment). Exhibit

[1] The participants in the restated CTA plan are the American Stock Exchange ("Amex"), Boston Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange ("NYSE"), Pacific Stock Exchange, and Philadelphia Stock Exchange.

B affords the participants flexibility by incorporating those unforeseen or less frequently-used provisions into the Consolidated Form on a case-by-case basis.

(3) *Genericization*—The universal nature of the Consolidated Form requires it to take a much more generic approach to the rights and obligations of the Contracting Party. Examples include:

(a) Existing Vendor Agreements allow a wide assortment of third parties to assist Contracting Parties in their receipt and use of market data (*e.g.*, "facilities proprietors," "cablecasters," "switch service suppliers," and "installation contractors"). The Consolidated Form adopts the umbrella concept of a "Service Facilitator" to generically govern the obligations of Contracting Parties in respect of those third parties.

(b) The Consolidated Form moves to Exhibit A all vendor-specific information, such as the services a vendor will provide or the means by which a vendor will receive access tomarket data (*e.g.*, directly versus indirectly; high speed line versus low speed line). As a result, the body of the Consolidated Form contains only generic references to the manner in which a vendor receives and uses market data.

(c) The Consolidated Form omits specification of the period after which a last sale price becomes a delayed last sale price.

(d) The Consolidated Form governs the receipt and use of multiple types of information. Like its predecessor forms in use over the past few years, the Consolidated Form governs last sale and quotation information disseminated pursuant to the plan, as well as market information furnished by the NYSE and Amex outside of the plan.

(e) The Consolidated Form applies to all types of vendor services: professional subscriber services, nonprofessional subscriber services, limited access services, and, for last sale information, delayed data services. It also applies in a generic way to all other foreseeable permitted uses of market data by a Contracting Party. The information provided in Exhibit A dictates which of the Consolidated Form's provisions governing those services and uses apply in respect of a particular vendor.

B. Administrative Changes

The Consolidated Form also incorporates administrative changes from Existing Vendor Agreements. The use of a generic form necessitates many of these changes. Other changes result from the participants' evaluation of their administrative experiences under Existing Vendor Agreements. The changes include:

(1) *The NYSE as Contract Administrator*—To facilitate the use of a generic form with wide application, to reduce the burden associated with administering market data contracts and to eliminate duplicative efforts, the plans delegate to the NYSE authority to administer contracts on behalf of the Network B participants. Thus, the NYSE will act for the Network B participants in executing the Consolidated Form on behalf of the Network B participants. The delegation of authority is solely ministerial and primarily permits the NYSE to approve one or more uses of market data relating to Network B eligible securities where the NYSE has already approved identical uses of market data relating to Network A eligible securities. In all other respects, Amex continues in its present role as the Network B administrator. The amendments conform the plan to reflect this delegation of authority.

(2) *Recapture of Costs Associated with Non-Compliance*—The Consolidated Form imposes a series of financial consequences relating to the unauthorized or unreported provision or use of market data designed to end subsidy of non-complying recipients by those who comply. The consequences include:

(a) If a Contracting Party makes an unauthorized or unreported provision or use of market data, it must pay any charge payable in respect of that provision or use. In addition, if a professional subscriber, a nonprofessional subscriber and/or any other person receives market data in the chain of dissemination that commenced with the Contracting Party's illicit provision or use, the Contracting Party must pay any charge payable in respect of any unauthorized or unreported provision or use of market data by such subscriber or other person. This provision recasts and replaces a provision found in Existing Vendor Agreements that requires the Contracting Party to indemnify the participants for losses resulting from reporting failures.

(b) The Contracting Party must pay an administrative fee equal to ten percent of the charges described in the preceding paragraph to cover the participants' investigations, processing and collection costs.

(c) The Contracting Party must pay interest on any charge not remitted in a timely manner. The interest rate will be the lesser of (1) one and one-half percent per month and (2) the maximum rate permitted by law. Existing Vendor Agreements already impose this charge, subject to a maximum for any one year equal to one million dollars, adjusted for inflation since 1983.

The Consolidated Form changes that maximum amount. In respect of each professional subscriber receiving market data as a nonprofessional, the vendor need pay no more than the applicable professional subscriber fees payable for the two preceding years plus the associated administrative and interest charges described above.

(3) *Audit Requirement*—Existing Vendor Agreements require the vendor to provide an audited list of nonprofessional subscribers annually, or more frequently if the participants so request. The Consolidated Form eliminates the mandatory annual audit, but otherwise expands the scope of the audit requirement. Upon request, the Contracting Party must provide an audited list or report containing such information as the participants may request, whether the request concerns nonprofessional subscribers, professional subscribers or other services.

(4) *Service Facilitators*—The Consolidated Form introduces the term Service Facilitator to replace the assortment of third parties that Existing Vendor Agreements permit to assist the Contracting Party in its receipt or use of market data. The Existing Vendor Agreements impose a variety of obligations on the Contracting Party in respect of those third parties and often require the third party to undertake to comply with the applicable terms and conditions of the agreement. To make the Consolidated Form more generic, the participants have determined to adopt a uniform approach to govern all Service Facilitators.

(a) First, the NYSE, as the contract administrator, must determine whether the third party plays the subsidiary role of a Service Facilitator or has more substantive responsibilities in the data dissemination process (*e.g.*, a partner or joint venturer). If the latter, the NYSE may require the third party to enter into the Consolidated Form, independently of the Contracting Party.

(b) If the NYSE determines a third party to be a Service Facilitator, the Service Facilitator need not undertake in writing to comply with the applicable terms and conditions imposed by the Consolidated Form. Instead, the Consolidated Form requires the Contracting Party to guarantee Service Facilitator's compliance. In addition, the NYSE will require the Contracting Party to cause Exhibit A to adequately describe the Service Facilitator and its functions.

(5) *Access to Records.*—Existing Vendor Agreements grant participants the right to have access to, and to audit, the vendor's nonprofessional subscriber records. In order to improve the participants' ability to monitor compliance, the Consolidated Form expands that right of access to include all relevant records of a Contracting Party.

(6) *Reasonableness Standard*—The Consolidated Form, unlike Existing Vendor Agreements, includes a provision that requires the participants to act in a reasonable manner when acting under the Consolidated Form. While the participants have always acted in a reasonable manner under their agreements, they intend for the explicit reasonableness standard to offer added comfort to Contracting Parties.

C. Deleted Provisions

The Consolidated Form omits a number of provisions found in Existing Vendor Agreements. The omitted provisions include:

(1) *Display Requirements.*—The restated CTA plan requires Existing Vendor Agreements to contain the following provisions:

(a) For vendors of last sale information interrogation services, the agreement must require that the interrogation devices have the ability to display the most recent last sale price relating to an eligible security.

(b) For vendors retransmitting a ticker display, the agreement must require the vendor to retransmit all last sale prices without deletions and to refrain from retransmitting unless CTA has first approved the retransmission format.

(c) For quotation information vendors, the agreement must require the vendor to display quotation information in a comprehensive, nondiscriminatory manner that complies with the Act and the rules and regulations thereunder.

(d) For quotation information vendors whose services include devices not capable of displaying quotation size and of indicating that bids and offers are not firm, the agreement must require the vendor to cause such devices to have both capabilities.

(e) The vendor's transmissions must comply with all display rules under the Act and the rules and regulations thereunder.

(f) The vendor's retransmitted ticker display devices must comply with all the NYSE requirements for content, format and timeliness.

Because the Consolidated Form and the plans are, by their terms, subject to the Act and the rules thereunder, and because the relevant provisions of the Act and its rules are enforceable in and of themselves, the participants have omitted the above-listed display requirements from the Consolidated Form as either redundant or no longer necessary. To conform to the plan accordingly, the amendments delete from the plan the requirements described above.

(2) *Regulation of Transmissions*—The Consolidated Form omits a provision requiring the Contracting Party to connect and use transmission equipment and to effect transmissions in accordance with the regulations of the participants, common carriers and relevant public authorities. Instead, the Consolidated Form relies upon the requirement that the equipment be arranged and protected so as to preclude unauthorized access. The participants feel that they can omit the provisions because the rules of public authorities are enforceable without reference to the Consolidated Form.

(3) *Regulation of Vendor's Transmission Facility*—The Consolidated Form omits the several provisions relating to the Contracting Party's fcilities. The omitted provisions include:

(a) The Contracting Party may only locate its service equipment and software at premises specifically identified in Exhibit A.

(b) The Contracting Party must control those premises and access to them.

(c) The Contracting Party must prohibit all but specifically identified persons from having access to market data at its premises.

(d) The Contracting Party must comply with and enforce the participants' regulations designed to prevent improper access to market data at its premises.

In some instances, equipment components may be located at so many locations, or may be moved from one location to another at such frequent intervals, identification of those locations in Exhibit A to the contract may be administratively burdensome and generally unnecessary. Instead, the participants feel that other elements of the Consolidated Form adequately protect against abuses at transmission facilities and computer sites. In particular, the participants will rely on the following:

(a) Exhibit A must describe the transmission facilities and computer sites in detail.

(b) The Consolidated Form contains proscriptions against unauthorized access to market data. (See paragraph 13(a) of the Consolidated Form.)

(4) *Device Requirements*—The Consolidated Form omits a provision prohibiting the vendor from attaching any display device to service equipment and software unless Exhibit A describes the device in detail. Because the participants already require Exhibit A to describe all service equipment, the prohibition is redundant.

(5) *Vendor Modification of Nonprofessional Subscriber Agreements*—The Consolidated Form omits a prohibition against the vendor modifying, or vitiating the terms of, any nonprofessional subscriber's application and agreement. The Consolidated Form requires the vendor to have nonprofessional subcribers sign the appropriate application and agreement(s) or an alternate form approved by the NYSE. The omitted provision would be redundant.

(6) *Competing Data Use*—The Consolidated Form omits a provision specifying that the participants may provide market data to all other parties, including competitors of the Contracting Party. Because the Consolidated Form does not provide for any "exclusive" arrangement, no implication arises that would necessitate that participants reserve the right to provide market data to others. Moreover, the Act makes clear that the participants must provide data to all who seek it and meet the terms of the provision.

(7) *Employee Authority to Act*—The Consolidated Form omits a provision clarifying that an officer, or a person designated by an officer, is authorized to act on behalf of the NYSE or the Amex. By operation of law, an officer would have the authority to act, or to delegate another person to act, on behalf of the NYSE or the Amex for market data contract purposes, even without a specific provision.

D. Provisional Use of Consolidated Form

The participants began provisional use of the Consolidated Form in mid-1988. Since then, the participants have required all new Contracting Parties to enter into it rather than into the Existing Vendor Agreements. Copies of the Consolidated Form executed prior to its final approval contain in Exhibit B a provision specifying that it may be superseded by the ultimate form of agreement.

Since that time, the participants have solicited comments and suggestions from Contracting Parties. In particular, they helped to create, and have participated in, a vendor committee formed by the Information Industry Association's Financial Information Services Division (the "Committee") for the purpose of examining the

Consolidated Form. Representatives of the participants and a cross section of the vendor community comprised the Committee. It provided a forum for discussing the concepts underlying the Consolidated Form and an opportunity for vendors to offer input. The participants explained the operation and rationale for provisions that vendors questioned and agreed to make several changes to address vendor concerns.

The Consolidated Form as filed contains modifications from the version that the participants have been using provisionally. Those modifications reflect many of the Committee's comments and suggestions as well as a number of other comments and suggestions raised by vendors and securities firms that were not on the Committee.

On August 9, 1989, the participants distributed copies of the Consolidated Form as filed to each member of the Committee. An accompanying letter explained the changes and explained why, in some instances, the participants declined to incorporate vendor comments into the Consolidated Form.

The participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form in the form filed.

Further the participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form (a) if and when it modifies the manner in which it receives or uses last sale or quotation information in a manner that would otherwise require it to execute a supplement or addendum to its Existing Vendor Agreements or (b) in lieu of an assignment of an Existing Vendor Agreement (as when a vendor merges into another corporation). By its terms, the Consolidated Form supersedes a predecessor Existing Vendor Agreement if the Consolidated Form's Exhibit A covers the service(s) that are the subject of the Existing Vendor Agreement. The participants may also ask other current Contracting Parties to execute the Consolidated Form in other instances, such as when doing so would serve administrative efficiency.

II. Implementation of The Amendment

Under section III(b) of the restated CTA plan, each of the plan's participants must execute a written amendment to the plan before the amendments can become effective. Each amendment is so executed.

III. Request For Comment

Interested persons are invited to submit written comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7–433 and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(27).

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28864 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27496; File No. SR–Amex–89–27]

Self-Regulatory Organizations; Notice of Proposd Rule Change by American Stock Exchange, Inc. Relating to the Comparison of Options Transactions Excluded from Clearance

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to revise its Rule 970 to provide a complete description of the procedures that members must follow to resolve options transactions excluded from clearance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Amex Rule 970 sets forth the basic framework for members to close out uncompared option transactions which cannot be resolved by mutual agreement. However, the rule does not specify in detail the actual procedures to be used in this regard. This differs significantly from the corresponding rule regarding equity transactions (Rule 723), which provides a complete description of the procedures that members must follow to resolve equity transactions excluded from clearance.

Although members generally follow procedures similar to those set forth in Rule 723 when attempting to resolve uncompared options transactions, it is important that the corresponding option rule be clear as to the precise steps that must be taken, not only to avoid confusion as to what is expected of members in this regard, but to provide increased certainty in the administration of the procedures and to help identify any abuses.

The Exchange is therefore proposing to revise Rule 970 to codify the existing procedures applicable to the resolution of disagreements arising out of uncompared option transactions. The following is a summary of the proposed revisions to Rule 970:

- Prior to the "call time" (i.e., the time designated by the Exchange when members and/or designated representatives must assembled in the area designated by the Exchange to resolve option transactions which did not clear) all parties must check contract sheets and verify uncompared trades which are the subject of Rejected Option Trade Notices (ROTNs) and review advisories which notify them that they are reported to be the contra side of uncompared trades.
- At the "call time", ROTNs are to be delivered by the uncompared side to the contra side whose name was given up.
- If the contra side "DKs" the ROTN, indicating that it does not know the trade as specified, the uncompared side

will promptly forward the ROTN to the broker who executed the order.

• If a trade is not resolved, a ruling must be obtained from a Floor Official as to whether the transaction is bona-fide.

• ROTNs must be "OK'd" to signify acceptance of the trade as specified, or DK'd no later than one-half hour prior to the opening of trading unless an agent (including a specialist) was involved in executing the order, in which case the time limit will be extended an additional 15 minutes.

• A party who has not received a response to a ROTN within the required timeframes cannot, without his consent, be held responsible for the trade to the party who failed to respond.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to "prevent fraudulent and manipulative acts and practices" and to "promote just and equitable principles of trade."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filling will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to the file number in the caption above (SR–Amex–89–27) and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28865 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27500; File No. SR-Amex-89–29]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the American Stock Exchange, Inc. Relating to New Listing Criteria Under Section 107 of the Amex Company Guide

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend section 107 of the Amex Company Guide to provide listing guidelines to accommodate securities not otherwise covered under existing Sections of the Company Guide. Guidelines relating to subscription rights currently covered in section 107 would be incorporated into section 340 (Subscription Rights), which sets forth the procedure for listing these rights.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, and is set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Listing Guidelines*—During the past several years, the Exchange has added provisions to its listing criteria to accommodate securities that could not be readily categorized under the Exchange's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants. For example, the Exchange has recently adopted specific listing guidelines covering foreign currency and index warrants.[1]

Today, more so than at any time in the past, issuers and underwriters are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities, *e.g.*, fixed face amount debt securities incorporating an opportunity for equity appreciation and fixed amount payment certificates based on the price level of the issuer's equity securities. Such securities are often designed to achieve more than one objective in connection with a specific corporate transaction, and, on occasion, have involved assets or categories of assets that traditionally may not have been segregated or used as collateral for a particular issue. As a consequence, such securities may take a variety of forms depending upon the particular objective(s) being sought, as well as general market conditions.

The Exchange believes it necessary to provide added flexibility in its guidelines to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing criteria. The

[1] *See* Amex *Company Guide*, Section 106.

proposed section 107 guidelines are intended to allow the Exchange added flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. However, the new section 107 guidelines [2] are not intended to accommodate the listing of securities that raise significant new regulatory issues, such as Americus Trusts, and which may be expected to require a separate filing with the Commission pursuant to Rule 19b–4 under the Act.

The proposed numerical listing criteria in needed section 107 are intended to accommodate major issuers with assets of $100 million and stockholders' equity of $10 million. These guidelines substantially exceed section 101 standard listing criteria.[3] Such issuers generally will be expected to meet the earnings criteria set forth in section 101.[4] Issuers not meeting these criteria generally will be required to have assets in excess of $200 million and stockholders' equity of $10 million, or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria in proposed section 107 are comparable to those currently existing in section 102(a) for equity issues,[5] except that when trading is expected to occur in much larger than average trading units, *e.g.*, $1,000 principal amount, a minimum of 100 holders will be expected.[6] The aggregate market value of issues listed under Section 107 will be expected to be at least $20 million, the same as the standard for debt securities of non-listed securities.[7]

Where such an instrument contains cash settlement provisions, settlement will be required to be made in U.S. dollars. Where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

The Exchange will apply the guidelines for continued listing contained in sections 1001 to 1003 [8] to section 107 securities as appropriate, in light of the specific nature of the securities, *e.g.*, debt/equity characteristics.

Finally, the Exchange is further amending existing Section 107 by deleting the provision on subscription rights from Section 107 and repositioning it to Section 340 (Subscription Rights), which sets forth the Exchange's procedure for listing subscription rights.

(b) *Membership Circular*—Securities listed for trading under section 107 are likely to possess characteristics common to debt and equity instruments alike. For this reason, prior to trading securities admitted to listing under section 107, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retain or institutional interest; and such other features of the issues that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effective of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–89–29 and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28866 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

[2] Section 107 currently deals only with subscription rights. It states that "[t]he Exchange will not list subscription rights unless the underlying security is, or will be, listed on the Exchange . . ." Amex Company Guide.

[3] Section 101 of the Amex *Company Guide* requires, as a condition of original listing, that stockholders' equity be at least $4,000,000.

[4] Section 101 requires pre-tax income of at least $750,000 in the issuer's last fiscal year, or in two of the last three fiscal years.

[5] Section 102(a) requires a minimum public distribution of 500,000 shares together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders.

[6] This is the same number of holders required under § 104(b) for debt securities of non-listed issuers.

[7] Section 104(b) of the Amex Company Guide.

[8] These sections of the Amex Company Guide set forth the Exchange's suspension and delisting policies.

[Release No. 34–27493; File No. SR–PSE–89–25]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Alternate Specialists

On September 19, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities

and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt, on a six month pilot basis, several policy statements relating to its alternate specialist system.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27343 (October 6, 1989), 54 FR 42429 (October 16, 1989). No comments were received on the proposal.

The PSE has proposed the adoption of several policy statements governing the activities of alternate specialists on its two equity trading floors.[3] PSE Rule II, Section 10, governs securities traded on an alternate specialist basis. The alternate specialist system was designed as a means of aiding primary specialists in the maintenance of a fair and orderly market. After an alternate specialist is approved and appointed under the PSE rules, an application is made by the alternate specialist for securities in which he or she undertakes a continuous obligation to engage "in dealings for his [or her] own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and the demand for a particular security, or a temporary distortion of the price relationships between the Exchange and other markets" (Rule II, section 10(d)).

During the course of an ongoing evaluation of the interaction of market conditions and Exchange systems, the PSE's Market Performance Committee, Equity Floor Trading Committee, and Equity Allocation Committee initiated a review of the PSE's alternate specialist system. Subsequent to this review, the Market Performance Committee approved certain policy statements governing the activities of alternate specialists, and it seeks to add these to Rule II, subsection 10(d) as commentaries .02 through .05. The Exchange requests approval of these policies for a a six month trial period to allow it an opportunity to monitor their effectiveness and determine whether additional changes are necessary.

Specifically, the Exchange proposes a clarification of the duty of alternate specialists to clear both primary specialist posts [4] on each of the PSE's two equity trading floors prior to entering into a trade.[5] It also proposes to preclude an alternate specialist whose specialist evaluation ranking falls in the bottom 10% of his or her trading floor from acting as an alternate specialist until the ranking rises above the bottom 10%.[6] Further, the proposal establishes a 500-share minimum requirement for alternate specialists who participate in certain pre-opening orders when requested to do so by a specialist.[7] Finally, the proposal requires that the names of the alternate specialists and designated stocks be displayed at each specialist post in alphabetical order.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[8] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to facilitate transactions in securities, to perfect the mechanism of a free and open market in exchange-listed securities, and protect investors and the public interest.

First, by expressly providing that alternate specialists must clear both primary specialist posts prior to entering into a trade, the Exchange is clarifying the responsibilities of alternate specialists in providing a market or improving upon a market, thereby helping to ensure that public customers obtain the best possible executions of their securities orders. Second, by providing that an alternate specialist who fails to meet certain performance criteria or who is subject to disciplinary action is precluded from acting as such for a period of time, the Exchange is ensuring that alternate specialists who have failed to engage in dealings in accordance with the rules of the PSE are prohibited from executing securities orders of pubilc customers during this time, thus protecting the public interest. Third, the Exchange's 500-share minimum paticipation requirement for alternate specialists on certain pre-opening orders, if so requested by the primary specialist, serves as an additional means of strengthening the specialist system: by providing additional depth to the pre-opening market, the alternate specialist will assist the primary specialist in maintaining a fair and orderly market. Finally, the Exchange's proposal to clearly post the name s of alternate specialists and designated stocks will serve to eliminate confusion on the Exchange's two trading floors, as well as assist in the overall orderliness and expediency of the trading process.

In addition, the Commission believes that the proposal is consistent with section 11(b) of the Act, which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. Moreover, the Commission believes that implementation of the PSE's proposal for a six months trial period will enable the Exchange to carefully monitor and assess the effectiveness of the policies as a means of strengthening the specialist system.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved for a six month period ending on June 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28867 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The PSE has two equity trading floors; one located in Los Angeles, and the other in San Francisco, California.

[4] The PSE currently requires floor brokers and alternate specialists to request a market quote from the primary specialist on each of its two trading floors (a practice known as "clearing the post") prior to entering into a trade.

[5] The new proposal will require an alternate specialist to clear both posts (*i.e.*, obtain market quotes from the applicable specialist on each trading floor) prior to effecting a transaction on the equity trading floors or on the Intermarket Trading System. Further, it proposes a sanction barring an alternate specialist who is subject to disciplinary action for failure to clear both posts from acting as an alternate specialist for a three month period.

[6] The PSE's Equity Allocation Committee may determine otherwise.

[7] The new proposal states that "[p]rior to the opening, in any order over 2,000 shares in which each primary specialist chooses to participate with at least 1,000 shares, an alternate specialist shall be required to participate with a minimum of 500 shares if requested by either specialist."

[8] 15 U.S.C. 78F (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. IC–17252; 812–7321]

United Services Fund, et al.; Notice of Application

December 4, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940, as amended (the "Act").

Applicants: United Services Funds, all future investment companies for which

United Services Advisors serves as investment advisor, and United Services Advisors (collectively, the "Funds").

Relevant 1940 Act Sections: Order requested under Sections 6(c) and 17(d) of the Act and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an order permitting the Funds to deposit their uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or weekend or holiday) repurchase agreements in a total amount equal to the aggregate daily balance in the joint account.

Filing Date: The application was filed on May 12, 1989 and amended on December 4, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 11330 Interstate Highway 10 West, San Antonio, Texas 78249–3340.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, at (202) 272–3035, or Karen L. Skidmore, Branch Chief, at (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The existing Funds are series of United Services Funds, an investment company registered under the Act. The Funds are authorized to invest in repurchase agreements. United Services Advisors, Inc. (the "Adviser") serves as investment adviser to each of the Funds. Each of the Funds has or may be expected to have uninvested cash balances in its custodian bank, Frost National Bank ("Frost"), from time to time which would not be invested in portfolio securities by the portfolio manager at the end of each trading day. in the normal course of business, if the amount of such assets of each Fund is separately of sufficient size, the Adviser attempts to invest the assets of such Fund in federal securities, overnight repurchase agreements with a bank or major brokerage house, or other similar short-term investment contracts, in order to earn additional income for that Fund. A Fund with residual assets which are not of adequate size to permit such an investment is unable to invest its residual assets in a similar manner.

2. Currently, the portfolio manager of each Fund prepares a projection of the total cash available of the Fund which will not otherwise be available for the day. The projection may be adjusted during the day to reflect the addtional amounts which become available during the day, although generally, there can remain some amount of assets which is received too late or is too small to be effectively invested in a separate transaction. The repurchase desk operated by the Adviser on behalf of the Funds each morning begins negotiating the interest rate for repurchase agreements for that day and lining up the U.S. Government obligations required as collateral. Most of the morning commitments for repurchase agreements are generally completed by 7:30 a.m. (San Antonio time), with an occasional commitment as late as 8:30 a.m. (San Antonio time) in unusual circumstances.

3. In connection with the use of repurchase transactions collateralized by U.S. Government securities, each of the Funds has established the same quality standards for issues of repurchase agreements and for collateral. These include creditworthiness standards for issuers of repurchase agreements, quality standards for collateral, and requirements that the repurchase agreements be at least 102% collateralized at all times or other such percentage as the Funds may, from time to time, establish, but in no event less than 100% of the amount of the repurchase agreement (including accrued interest earned thereon). Each repurchase agreement would be made by calling a U.S. bank, a non-primary U.S. government securities dealer or a major brokerage house and indicating the rate of interest and size of the desired repurchase agreement. U.S. Government obligations to be held as collateral by the Funds would then be identified and the Funds' custodian bank would be notified. These securities would either be wired to the account of Frost at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Fund at another qualified bank or redesignated and segregated on the records of Frost if Frost is already the recorded holder of the collateral for the repurchase agreement. This procedure would occur on almost every trading day for each of the Funds which wish to enter into repurchase agreement.

4. Applicants propose to establish a joint trading account ("Account"). Each Fund will automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into such Account. The Account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The Account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the Account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balances.

5. Cash in the Account will be invested in repurchase agreements collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by any of the Funds for such investments. Each such repurchase agreement will have an overnight or over-the-weekend duration, and may have a duration of no more than seven days.

6. All investments held by the Account will be valued on an amortized cost basis. Each Fund subject to an exemptive order permitting valuation on the basis of amortized cost or relying upon Rule 2a–7 under the Act would use the average maturity of the Account for purposes of computing the Fund's average portfolio maturity with respect to the portion of its assets held in the Account on that day.

7. In order to assure that a Fund can only use its balance of the Account, Funds will not be allowed to create a negative balance in the Account for any reason. A Fund's decision to invest in the Account will be solely at the Fund's option. A Fund will not be obligated to invest in the Account nor to maintain any minimum balance. A Fund may withdraw all, or a portion, of its investment in the Account at any time. In addition, a Fund will retain the sole rights of ownership of any of its assets, including any interest payable on such assets invested in the Account. Each fund's investment in the Account will be documented daily on the books of the

Funds as well as on the books of the Funds' custodian. Applicants believe that a Fund's investment in the Account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, of any other participant Fund in the Account. Each Fund's liability on any repurchase agreement purchased by the Account will be limited to its interest in such repurchase agreement.

8. Each Fund will participate in the income earned or accrued in the Account and all instruments (*i.e.*, cash and U.S. Government securities) held in the Account on the basis of the Fund's percentage of the total amount in the Account on any day represented by its share of the Account.

9. The Adviser will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment management contract with each Fund and will not collect any additional fee for the management of the joint account. The Adviser will continue to collect its fees based upon the total net assets of each separate Fund provided in each respective investment management agreement.

10. The Account will be administered within the fidelity bond coverage required by Section 17(g) of the Act and Rule 17g–1 thereunder. The Board of Trustees of the existing Funds and of future funds participating in the Account will evaluate the Account arrangements annually, and will continue the Account only if they determine that there is a reasonable likelihood that the Account will benefit the Funds and their shareholders.

11. Each Fund will participate in the Account on the same basis as every other fund and in conformity with each Fund's fundamental investment objectives and restrictions. Participation in the Account will not result in any conflicts of interest between any of the Funds or between a Fund and the Adviser. Future investment companies for which the Adviser serves as investment adviser will be required to participate in the Account on the same terms and conditions as the existing Funds.

12. Applicants believe that the Funds will earn a higher return by participating in the Account rather than by maintaining individual accounts because it is possible to negotiate a rate of return on a large repurchase agreement which is greater than the rate of return which can be negotiated for smaller repurchase agreements. Also, at present asset levels, the Funds will reduce the aggregate amount of the related transactions fees incurred annually. During the twelve month period ending December 31, 1988, the estimted total transaction costs would have been reduced by approximately $28,800.

Applicants' Conditions

Applicants agree to operate the Account in accordance with the representations set forth in paragraphs 4 through 10 above and agree that such representations may be made express conditions of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28868 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17249; File No. 811–4123]

USAA Life Portfolio Series, Inc., Notice of Application

December 1, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: USAA Life Portfolio Series, Inc.

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Appliction: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 27, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicant, 9800 Fredericksburg Road, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272–3027 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3262 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is a corporation established under the laws of the State of Maryland. Applicant is an open-end management investment company, registered under the 1940 Act. Applicant filed its notice of registration under the 1940 Act and a Form N–1A registration statement on October 11, 1984.

2. Applicant's Form N–1A registration statement under the Securities Act of 1933 was declared effective by the commission on August 26, 1985. The registration statement pertains to Applicant's shares of common stock, which were offered and sold only to Variable Account A of USAA Life Insurance Company (the "Separate Account") in connection with flexible premium variable life insurance policies ("Policies"), which were funded through Applicant and which were offered and sold by USAA Life Insurance Company ("USSA Life"). Four classes of shares were registered, each corresponding to one of Applicant's four investment portfolios: Balanced Portfolio, Growth Portfolio, Income Portfolio, and Money Market Portfolio.

3. The public offering of Policies and all classes of Applicant's shares commenced on May 12, 1986, but, according to Applicant, the volume of Policies sold did not meet USAA Life's expectations, which made the Policies less advantageous from the standpoint of both USAA Life and Policy owners.

4. Accordingly, sales of new Policies were suspended in February 1989, and, in June 1989, USAA Life mailed to all Policy owners a letter that offered Policy owners two previously unavailable options for terminating their Policies.

5. These new options were (a) to receive a specified amount of cash or (b) to receive a flexible premium fixed benefit life insurance policy issued by USAA Life ("Universal Policy") having a specified cash value. The specified amount of cash or cash value, as the case may be, was guaranteed to be not less than, among other things, the greater of (i) the Policy's cash value (less any outstanding Policy loan balances) as of June 13, 1989, plus a 15% bonus

(subject to appropriate adjustment for premium payments, loan transactions or withdrawals subsequent to January 13, 1989) or (ii) the Policy's cash value on the date the exchange or cash-out was effected.

6. All Policy owners were also given the option of declining the exchange or cash-out offer altogether or surrendering their Policies for their cash values at any time prior to the time the exchange or cash-out was effected.

7. All Policy owners accepted either the exchange or cash-out option and all exchanges and cash-outs were effected on September 14, 1989. Checks were mailed to Policy owners on September 19, 1989 in the full amount of all cash-out proceeds due to them. Subsequently, USAA Life has caused all of Applicant's shares of record held by USAA Life or the Separate Account to be redeemed. Because these were all of Applicant's outstanding shares, Applicant paid out all of its assets as redemption proceeds or as a liquidating dividend or distribution at the time of said redemption. Applicant, therefore, has no assets and no intention to acquire any assets in the future.

8. Applicant has no security holders and no known debts or other outstanding liabilities, and Applicant is not a party to any known litigation or administrative proceedings.

9. Applicant is not now engaged, and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

10. All expenses incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by USAA Life. Each Policy owner received from USAA Life, pursuant to the exchange or cash-out offer, an amount of Universal Life cash value or an amount of cash that was greater than the cash value of his or her Policy on September 14, 1989.

11. Applicant has filed articles of dissolution with the State of Maryland, and said articles have been accepted by the state.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28869 Filed 11-8-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17250; File No. 811-4124]

Variable Account A of USAA Life Insurance Co; Notice of Application

December 1, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice to Application for Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Variable Account A of USAA Life Insurance Company.

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 27, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant 9800 Fredericksburg Road, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272-3027 or Clifford D. Kirsch, Acting Assistant Director, (202) 272-2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3262 (in Maryland (301) 253-4300).

Applicant's Representations

1. Applicant is a separate investment account of USAA Life Insurance Company ("USAA Life") established under the insurance laws of the state of Texas. Applicant is a unit investment trust investment company, registered under the 1940 Act. Applicant filed its notice of registration under the 1940 Act and a Form N-8B-2 registration statement on October 11, 1984.

2. Applicant and USAA Life a Form S-6 registration statement under the Securities Act of 1933 on October 11, 1984, which registration statement, as amended, was declared effective by the Commission on August 26, 1985. The Form S-6 registration statement pertains to units of interest under USAA Life's flexible premium variable life insurance policies ("Policies"), which are funded through Applicant. Four classes of units were registered, each corresponding to one of Applicant's four subaccounts: Balanced Subaccount, Growth Subaccount, Income Subaccount, and Money Market Subaccount.

3. The public offering of Policies commenced on May 12, 1986, but, according to Applicant, the volume of Policies sold did not meet USAA Life's expectations, which made the Policies less advantageous from the standpoint of both USAA Life and Policy owners.

4. Accordingly, sales of new Policies were suspended in February 1989, and, in June 1989, USAA Life mailed to all Policy owners a letter that offered Policy owners two previously unavailable options for terminating their Policies.

5. These new options were (a) to receive a specified amount of cash or (b) to receive a flexible premium fixed benefit life insurance policy issued by USAA Life ("Universal Policy") having a specified cash value. The specified amount of cash or cash value, as the case may be, was guaranteed to be not less than, among other things, the greater of (i) the Policy's cash value (less any outstanding Policy loan balances) as of June 13, 1989, plus a 15% bonus (subject to appropriate adjustment for premium payments, loan transactions or withdrawals subsequent to January 13, 1989) or (ii) the Policy's cash value on the date the exchange or cash-out was effected.

6. All Policy owners were also given the option of declining the exchange or cash-out offer altogether or surrendering their Policies for their cash values at any time prior to the time the exchange or cash-out was effected.

7. All Policy owners accepted either the exchange or cash-out option and all exchanges and cash-outs were effected on September 14, 1989. Checks were mailed to Policy owners on September 19, 1989 in the full amount of all cash-out proceeds due to them. Subsequently, USAA Life has caused all of Applicant's assets to be transferred to USAA Life's general account, and Applicant, therefore, has no assets and no intention to acquire any assets in the future.

8. Applicant has no security holders and no know debts or other outstanding liabilities, and Applicant is not a party

to any known litigation or administrative proceedings.

9. Applicant is not now engaged, and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

10. All expenses incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by USAA Life. Each Policy owner received from USAA Life, pursuant to the exchange or cash-out offer, an amount of Universal Life cash value or an amount of cash that was greater than the cash value of his or her Policy on September 14, 1989.

11. USAA Life will file with the Texas State Board of Authority and issue a new Certificate of Authority deleting USAA Life's variable contract authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28870 Filed 12-8-89; 8:45 am]

BILLING CODE 8010-01-M

STATE DEPARTMENT

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Friday, January 19, 1990, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Education Assistance
   (a) Final Report of 1988 Program and Initial Report on 1989 Program
   (b) Council's Efforts in Securing Contributions for 1989 Program
   (c) Recommendations of Council's Evaluation Committee Regarding Projects Submitted by Regional Overseas Schools Associations for 1990 Program
II. Forum on Current Conditions of U.S. Education
III. Initial Results of Surveys Concerning Schools Fund-Raising Drives and Activities of Overseas Schools Regional Associations
IV. Report of the Subcommittee to Increase U.S. Firms Participation in American-sponsored Overseas Schools Activities
V. Council's Communication with U.S. Corporations and Foundations
VI. Selection of Date of Council's Annual Meeting

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas Schools Advisory Council, Department of State, Room 245, SA-29, Washington, DC 20522-2902 or telephone Ms. Joyce Bruce on area code 703-875-7943, prior to January 19. The public may participate in discussions at the Chairman's instructions.

Dated: November 7, 1989.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 89-28844 Filed 12-8-89; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF STATE

[Public Notice CM-8/1331]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1000 on Wednesday, 20 December 1989, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. This public meeting is being held in preparation for:

1. The International Maritime Organization (IMO) Conference on the Revision of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (London, 26-30 March 1990); and

2. The 62nd session of the IMO Legal Committee (London, 2-6 April 1990).

Brief reports will also be presented concerning two recent international negotiating sessions:

1. The 3rd round of Intergovernmental Talks on the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS) (London, 21-22 September 1989); and

2. The 6th and final session of the IMO/UNCTAD (United Nations Conference on Trade and Development) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages (London, 25-29 September 1989).

The IMO Conference on the 1974 Athens Convention will take up a draft protocol adopted by the IMO Legal Committee at its 60th Session in October 1988. The draft protocol is limited in scope, seeking only to: (1) Enhance the compensation available thereunder; and (2) introduce a simplified procedure for updating the compensation amounts.

The U.S. has not ratified the 1974 Athens Convention. The upcoming conference negotiations are important from the U.S. perspective, however, in view of both the significant passenger cruise trade and the relationship of the 1974 liability limits to those in other international liability regimes currently under consideration.

With respect to HNS liability and compensation, the IMO Legal Committee has resumed work on this subject in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at the 1984 Diplomatic Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea. It should be noted that development and implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

Recent negotiating developments indicate a continuing strong international desire to expedite this HNS work. As a result, it is expected that the Legal Committee's entire 62nd session will be devoted to this subject. The U.S. is currently preparing an HNS paper for the 62nd session, and a progress report will be provided at the SHC meeting.

The foregoing topics will be discussed at the open SHC meeting. The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be discussed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: November 22, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-28845 Filed 12-8-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-45]

Petition for Exemption

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory acitivities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 1, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 4, 1989.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24041.

Petitioner: Butler Aircraft Co.

Regulations Affected: 14 CFR 91.211(a)(1).

Description of Relief Sought: To extend Exemption No. 2989, as amended, that allows petitioner to operate its Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under part 137 of the FAR. Exemption No. 2989, as amended, will expire on April 30, 1990.

Docket No.: 25400.

Petitioner: Big Sky Transportation Company.

Sections of the FAR Affected: 14 CFR 135.181(a)(2).

Description of Relief Sought: To extend Exemption No. 4923 that allows petitioner to operate its Swearingen SA 226TC Metro II airplanes under IFR or under VFR over the top on V536 between FCA VOR/DME and the Piken Intersection at an altitude that will allow drift down to a flight altitude not below the MEA over those routes using manufacturer's approved performance data. Exemption No. 4923 will expire on April 30, 1990.

Docket No.: 25445

Petitioner: Aviation Systems, Inc.

Sections of the FAR Affected: 14 CFR 91.79(b) and (c), 91.109, and 91.121.

Description of Relief Sought: To extend Exemption No. 5020 that allows petitioner to conduct flight inspections of navigational landing aids. Exemption No. 5020 will expire on February 28, 1990.

Docket No.: 25989

Petitioner: Capitol City Express.

Sections of the FAR Affected: 14 CFR 43.2(g).

Description of Relief Sought: To allow petitioner's pilots to change the seat configuration in air taxi aircraft.

Docket No.: 24950

Petitioner: General Electric Company, Aircraft Engine Business Group.

Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3).

Description of Relief Sought/ Disposition: To extend Exemption No. 4675 that allows Class I, II, and III products, which have been manufactured, assembled, and tested by Rolls Royce Limited, located in Derby, England, to be eligible for the issuance of export airworthiness approvals. Exemption No. 4675 will expire on December 29, 1989. *Grant, November 27, 1989, Exemption No. 4675A.*

Docket No.: 25624

Petitioner: McDonnell Douglas Airplane Company.

Regulations Affected: 14 CFR 121.411 and 121.413 and Part 121, Appendix H.

Description of Relief Sought/ Disposition: To allow petitioner and any Part 121 certificate holder who contracts with petitioner for training to use certain of petitioner's instructor pilots and, if appropriate, flight engineer instructors to train the initial cadre of pilots and flight engineers and also to train the certificate holder's airmen in initial, upgrade, transition, differences, and recurrent training without petitioner's instructors meeting all of the training requirements of subpart N and employment requirements of part 121, Appendix H. *Grant, November 30, 1989, Exemption No. 5117.*

Docket No.: 25760

Petitioner: Flight International.

Sections of the FAR Affected: 14 CFR 2125(b)(2) and 91.36(b).

Description of Relief Sought/ Disposition: To permit operation of petitioner's Northrop F-5 aircraft in the restricted category for compensation for carriage of defense-related equipment. Exemption not Required, November 20, 1989.

Docket No.: 26052

Petitioner: Trans World Airlines, Inc.

Sections of the FAR Affected: 14 CFR 25.1303(c)(1).

Description of Relief Sought/ Disposition: To allow operation of two U.S.-registered Lockheed L-100-385-1-15 airplanes, Serial Numbers 193U-1201 and 193U-1203, with an overspeed warning tolerance 6 knots greater than allowed by the FAR. The petitioner requested an indefinite time period for the exemption. *Grant, November 17, 1989, Exemption No. 5113.*

Docket No.: 006NM

Petitioner: Aerospatiale.

Sections of the FAR Affected: 14 CFR 25.571(e)(2).

Description of Relief Sought/ Disposition: To amend Exemption No. 4385 that allows type certification of the Model ATR 42 without showing that the airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of propeller blade impact. The amendment to Exemption No. 4385 would permit such type certification of the later Model ATR 72. *Grant, November 14, 1989, Exemption No. 4385A.*

[FR Doc. 89-28801 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Keahole Airport, Kailua-Kona, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by State of Hawaii, Department of Transportation for Keahole Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program tha was submitted for Keahole Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 13, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 14, 1989. The public comment period ends January 13, 1990.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP–611, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 213/297–1250. Comments on the propsoed noise compatibility should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Keahole Airport are in compliance with applicable requirements of part 150, effective November 14, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 13, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the act, may submit a noise compatible program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Hawaii, Department of Transportation, submitted to the FAA on April 4, 1988 and revised on September 20, 1989, noise exposure maps, descriptions and other documentation which were produced during the preparation of the Revised Noise Compatibility Program, Keahole Airport, Hawaii, dated November 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Exhibits 5, 6 and 7 in the submission. The FAA has determined that these maps for Keahole Airport are in compliance with applicable requirements.

This determination is effective on November 14, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Keahole Airport, also effective on November 14, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program.

The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 13, 1990. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

State of Hawaii, Department of Transportation, Airports Division,

Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819.

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Keahole Airport, Kailua-Kona, Hawaii 96740.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Hawthorne, California on November 14, 1989.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 89-28804 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics, Special Committee 161—Minimum Aviation System Performance Standards for Radio Determination Satellite Service; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the eighth meeting of Radio Technical Committee for Aeronautics (RTCA) Special Committee 161 on Minimum Aviation System Performance Standards for Radio Determination Satellite Service to be held January 9-10, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) consideration of Comments to Proposed Final Draft Report "Minimum Aviation System Performance Standards for Radio Determination Satellite Service (RDSS), RTCA Paper No XXX-89/SC161-XX; (3) other business; and (4) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 29, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-28802 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

Airport Traffic Control Tower at Hailey, ID; Establishment

Notice is hereby given that on or about December 1, 1989, an airport traffic control tower will be opened at the Friedman Memorial Airport, Hailey, Idaho. Hours of operation will be 7 a.m. to 11 p.m. local time daily, 7 days a week. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Issued in Seattle, Washington, on November 17, 1989.

Larry Andriesen,

Acting Regional Administrator, Northwest Mountain Region.

[FR Doc. 89-28803 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-857]

American Maritime Transport, Inc., Application for a waiver to permit Certain Foreign-Flag Operations by an Affiliate

American Maritime Transport, Inc. (AMT) by application dated October 24, 1989, as supplemented and amended by letters of November 16, 1989, November 29, 1989, and December 6, 1989, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations by Ultramar Shipping Company, Inc. (Ultramar).

The Applicants have requested the approvals required for the acquisition of 49 percent of AMT by Ultramar and the acquisition by a limited partnership to be composed of AMT (51 percent) and Ultramar (49 percent) of the subsidized vessels GOLDEN ENDEAVOR, ULTRAMAR, and ULTRASEA. Although Ultramar operates foreign-flag vessels, the Applicants aver that a section 804 waiver is not necessary since Ultramar has no voting power in AMT. By letter of November 24, 1989, the Maritime Administrator advised the Applicants that a waiver of section 804 is required for Ultramar to purchase any interest in AMT. Subsequently, the Applicants requested a section 804 waiver for the remaining term of AMT's subsidy contracts, approximately five years.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 15, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.
Dated: December 7, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-28970 Filed 12-7-89; 12:33 pm]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Grants and Denials of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in April-June 1989. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582-X	DOT-E 2582	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582-X	DOT-E 2582	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2709-X	DOT-E 2709	Atlas Powder Company, Dallas, TX	49 CFR 173.62, 173.93, 176.76(h), 177.821, 177.834(L)(1), 177.835(k), 46 CFR part 146.	To authorize shipment by cargo vessel. (Modes 1, 3.)
3667-X	DOT-E 3667	Groendyke Transport, Inc., Enid, OK.	49 CFR 173.315(a)	To authorize transport of a flammable compressed gas in aluminum cargo tanks otherwise built in compliance with Specification MC-330. (Mode 1.)
4291-X	DOT-E 4291	United Technologies Corp./Chemical Systems Div., San Jose, CA.	49 CFR 173.239a(a)(2)	To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2.)
4338-P	DOT-E 4338	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.119(m), 173.245a, 173.247, 174.63(lb).	To become a party to exemption 4338 (Modes 1, 2, 3.)
4453-X	DOT-E 4453	El Dorado Chemical Company, St. Louis, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Pacco, Inc., Olympia, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Alamo Explosives Company, Inc., Houston, TX.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Strawn Explosives, Inc., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Austin Powder Company, Cleveland, OH.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Wampum Hardware Company, New Galilee, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	A. M. Contracting, Grove City, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Maynes Explosives Company, Lee's Summit, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Mining Services International (MSI) Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Cherokee Products, Inc., Jefferson City, Tn.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4575-P	DOT-E 4575	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575 (Modes 1, 2, 3.)
4884-X	DOT-E 4884	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize an additional packaging, non-DOT specification steel cylinders, having a greater nominal water capacity (1000 pounds) than is presently authorized (90 pounds). (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.203(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	UNIGAS, Inc., Ponce, PR	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4884-P	DOT-E 4884	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The West, Oakland, CA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	GenEx, Ltd., Des Moines, IA	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
5243-X	DOT-E 5243	Austin Powder Company, Cleveland, OH.	49 CFR 173.103(a), 173.66(g)(1), 177.835(g).	To authorize modified DOT specification packaging for transportation of Class C or Class A explosives. (Modes 1, 2, 3.)
5643-P	DOT-E 5643	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.76(h), 178.338.	To become a party to exemption 5653 (Modes 1, 3.)
5643-P	DOT-E 5643	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.203, 173.318, 173.320, 176.76(h), 178.338.	To become a party to exemption 5643 (Modes 1, 3.)
5749-X	DOT-E 5749	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of samller outside dimension valves: To authorize use of new bolts and studs that have lower temperature properties; and removable fiberglass panel. (Mode 1.)
5876-X	DOT-E 5876	FMC Corporation, Philadelphia, PA	49 CFR 173.365, 178.241, part 107, Appendix B.	To authorize transport of a Class B poison in DOT Specification 44D multiwall paper bags or non-DOT specification pinch bottom, heat-sealed multiwall bags. (Modes 1, 2, 3.)
5895-X	DOT-E 5895	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.100(cc), 173.104(b), 175.3.	To authorize use of a non-DOT specification inner container overpacked in a DOT Specification 12H fiberboard box, or a wooden box, for shipment of class C explosives. (Modes 1, 2, 3, 4.)
5967-X	DOT-E 5967	Rocket Research Company, Redmond, WA.	49 CFR 173.304(a)(2), 175.3, 178.44.	To authorize use of non-DOT specification cylinders conforming in part with DOT Specification 3HT, for shipment of a nonflammable gas. (Modes 1, 2, 4, 5.)
6016-X	DOT-E 6016	Airco Acety Arc, Inc., Paducah, KY	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6349-P	DOT-E 6349	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.101, 173.315(a)	To become a party to exemption 6349 (Modes 1, 2, 3.)
6418-P	DOT-E 6418	Maui Pineapple Co., Ltd., Haliimaile, HI.	49 CFR 173.357(b)	To become a party to exemption 6418 (Mode 1.)
6538-X	DOT-E 6538	Intourgas, Plein Air S.r.l., Milan, Italy.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6614-X	DOT-E 6614	Hasa Chemicals, Inc., Saugus, CA	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Clearwater Chemical Corporation, Clearwater, FL.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6657-P	DOT-E 6657	TRI-GAS, Inc., Irving, TX	49 CFR 173.34(e)(15)(i), 175.3	To become a party to exemption 6657 (Modes 1, 2, 3, 4, 5.)
6702-X	DOT-E 6702	Seradyn, Inc., Indianapolis, IN	49 CFR 173.242(a), 173.25, 173.286(c), 175.3.	To authorize use of glass or plastic bottles overpacked in a DOT Specification 12A fiberboard box for certain corrosive liquids. (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6712-X	DOT-E 6712	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC-3, 3A or 3AA cylinders. (Modes 1, 2, 3, 4, 5.)
6765-P	DOT-E 6765	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765 (Modes 1, 3.)
6805-P	DOT-E 6805	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805 (Mode 1.)
6816-X	DOT-E 6816	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6816-X	DOT-E 6816	McDonnell Douglas Astronautics Company, Saint Louis, MO.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6974-X	DOT-E 6974	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
7023-X	DOT-E 7023	Texas Instruments, Inc., Dallas, TX	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material. (Mode 1.)
7051-X	DOT-E 7051	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid.
7051-X	DOT-E 7051	Ozark-Mahoning Company, Tulsa, OK.	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid. (Modes 1, 4.)
7052-X	DOT-E 7052	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101, 172.400, 175.3	To authorize modification of Paragraph 6 to include crew carrying helicopter to offshore rigs. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Ocean Technology, Inc., Burbank, CA.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	R-Con International, Salt Lake City, UT.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of reserve-activated lithium/thionyl chloride IRSS battery modules packaged in DOT Specification 19A wooden boxes. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Mercury Instruments, Inc., Cincinnati, OH.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	SAB NIFE A/S, Denmark	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Honeywell Inc., DASD/San Mateo Facility, Albuquerque, NM.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Valvcon Corporation, Milford, NJ	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Geomar International, Inc., Missouri City, TX.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Medtronic, Inc./Promeon Division, Brooklyn Center, MN.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Perfco Wireline, Inc., Houma, LA	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Telecommunication Devices, Inc. (TDI) Downers Grove, IL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Oceanstar Systems Incorporated, Cataumet, MA.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Fairchild Communications & Electronics Company, Germantown, MD.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7060-X	DOT-E 7060	Airborne Express, Inc., Wilmington, OH.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo only aircraft when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7060-X	DOT-E 7060	Central Skyport Inc., Columbus, OH	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo only aircraft when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7076-X	DOT-E 7076	LaMotte Chemical Products Company, Chestertown, MD.	49 CFR 173.286(b)	Amend to allow shipment of oxidizers and the quantity per each vial or bottle to 250 ml or 250 grams. (Modes 1, 2, 3.)
7269-X	DOT-E 7269	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a)	To authorize use of sift-proof paper or plastic bags overpaced in DOT Specification 210 fiber drums, for transportation of certain Class A explosives. (Mode 1.)
7282-X	DOT-E 7282	MarChem Corporation, Maryland Heights, MO.	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification steel portable tanks, for shipment of certain mixtures of nonpoisonous, nonflammable compressed gases. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7489-X	DOT-E 7489	Micor Company, Inc., Milwaukee, WI.	49 CFR 172.312, 173.249, 175.3	To authorize the addition of transportation via cargo aircraft. (Modes 1, 2, 3.)
7546-X	DOT-E 7546	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.119, 173.302(a), 173.304(a), 173.305(a), 173.34(d), 175.3.	To authorize use of a heat pipe radiator assembly for shipment of certain flammable liquids and nonflammable and flammable compressed gases. (Modes 1, 2, 4.)
7555-X	DOT-E 7555	Provost Cartage, Incorporated, Ville d'Anjor, Quebec, CN.	49 CFR Part 173, subpart F	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made from non-metallic materials, for transportation of certain hazardous materials. (Mode 1.)
7607-P	DOT-E 7607	Layne-Western Company, Inc., Shawnee Mission, KS.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-X	DOT-E 7607	Ecology and Environment, Inc., Lancaster, NY.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7616-X	DOT-E 7616	Union Pacific Railroad Company, Omaha, NE.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Wisconsin Central, Ltd., Rosemont, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7716-X	DOT-E 7716	Kinepak, Inc., Dallas, TX	49 CFR 173.153(b)(1)	To authorize transport of ammonium nitrate in inside polyethylene bottles or foil pouches, each containing less than 3 pounds or less, overpacked in DOT Specification 12H-65 fiberboard boxes with a plastic liner bag containing not more than 36 pounds net weight. (Modes 1, 2, 3.)
7753-X	DOT-E 7753	Monsanto Chemical Company, Saint Louis, MO.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tighthead 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7822-X	DOT-E 7822	Air Products and Chemcials, Inc., Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize several types of expolsives in the same package, in quantities greater than authorized by 49 CFR 173.87. (Modes 1, 3.)
7835-P	DOT-E 7835	The Rinchem Co., Inc., Phoenix, AZ.	49 CFR 177.848, part 107, Appendix B(1).	To become a party to exemption 7835. (Mode 1.)
7835-X	DOT-E 7835	AGA Gas, Inc., Cleveland, OH	49 CFR 177.848, 107 Appendix B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas lable and tank car tanks bearing the poison gas lable on the same vehicle. (Mode 1.)
7835-X	DOT-E 7835	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 177.848, part 107 Appendix B(1).	To authorize transport of compressed gas in clyinders bearing the flammable gas lable, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7887-X	DOT-E 7887	Vulcan Systems, Inc., Colorado Springs, CO.	49 CFR 172.101, 173.111, 175.3, part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7943-P	DOT-E 7943	Action Chemical Company, Phoenix, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7954-P	DOT-E 7954	Jack B. Kelley, Inc., Amarillo, TX	49 CFR 172.101, 172.504, 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 7954. (Modes 1, 3.)
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specification plywood boxes. (Mode 1.)
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(d), 173.34(d), 175.3.	To authorize a greater service life, from 5 years to 15 years, or a greater number of pressurizations, for 200 to 300, for the exempted packaging. (Modes 1, 2, 4.)
8156-P	DOT-E 8156	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8195-X	DOT-E 8195	McDonnell Douglas Corporation, Saint Louis, MO.	49 CFR 173.6(b)(3), 175.3, part 173, subpart D, F, H.	To authorize use of non-DOT specification metal drums as outside containers in lieu of prescribed DOT specification fiberboard and wood containers, for shipments of flammable liquids, corrosive materials, and Class B poisons subject to 49 CFR 173.6(b)(3). (Modes 1, 2, 4, 5.)
8225-X	DOT-E 8225	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, part 173, subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded polyethylene portable tanks, for transportation of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
8230-X	DOT-E 8230	J. T. Baker Inc., Phillipsburg, NJ	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8230-P	DOT-E 8230	Strem Chemicals, Inc., Newburyport, MA.	49 CFR 173.268(b)(6), 173.269(a)(4).	To become a party to exemption 8230 (Modes 1, 2, 3, 4.)
8236-P	DOT-E 8236	TRW Inc., Romeo, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, 4.)
8239-X	DOT-E 8239	Imaging and Sensing Technology Corporation, Horseheads, NY.	49 CFR 172.101 column 6(a), 172.101 column 6(b), 173.302, 175.3.	To authorize use of non-DOT specification containers for the shipment of nonflammable gases. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8248-X	DOT-E 8248	Cerametals, Inc., New York, NY	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248-X	DOT-E 8248	C. M. China Trade, Inc., New York, NY.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248-X	DOT-E 8248	China Metallurgical Import & Export Corporation Shanghai, China.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8249-X	DOT-E 8249	LPS Industries Inc., Newark, NJ	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a) and Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 173.3, 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.)
8255-X	DOT-E 8255	Applied Companies, San Fernando, CA.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of nonreusable (nonrefillable) non-DOT specification welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4.)
8256-X	DOT-E 8256	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102-16, 179.202-13.	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device. (Mode 2.)
8445-P	DOT-E 8445	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR part 173, subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	EnviroCure, Pittsburgh, PA	49 CFR part 173, subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8450-X	DOT-E 8450	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.92	To authorize 2 inch diameter sight hold in side boards of container and use of steel strapping to hold lids in place. (Mode 1.)
8451-P	DOT-E 8451	DIVEX, Inc., Columbia, SC	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453-X	DOT-E 8453	Energy Ventures Corp. dba Columbus Powder Company, Columbus, In.	49 CFR 173.114a	To authorize use of non-DOT Specification cargo tanks and DOT specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8465-X	DOT-E 8465	Chase Packaging Corp., Greenwich, CT.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrate mixtures.. (Modes 1, 2, 3.)
8516-X	DOT-E 8516	Austin Powder Company, Cleveland, OH.	49 CFR 176.83(b)	To authorize stowage of certain oxidizers and blasting agents in the same hold, compartment or freight container. (Mode 3.)
8518-X	DOT-E 8518	Crosby & Overton Inc., Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-X	DOT-E 8518	Lomita Gasoline Company, Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-P	DOT-E 8518	Speed's Oil Tool Service, Inc., Santa Maria, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-X	DOT-E 8518	Ecology Control Industries, Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-X	DOT-E 8518	International Technology Corporation, Martinez, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-X	DOT-E 8518	Denver Truck Sales, Commerce City, CO.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8518-X	DOT-E 8518	Central Pumping Company, Inc., La Habra, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8549-X	DOT-E 8549	United Pumping Service, Inc., City of Industry, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8554-P	DOT-E 8554	Minnesota Explosives Company, Biwabik, MN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3.)
8554-P	DOT-E 8554	Energy Ventures Corp. d/b/a Columbus Powder Co., Columbus, IN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of the West, Oakland, CA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	UNIGAS, Inc., Ponce, PR	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of the South, Inc., Houston, TX.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556-P	DOT-E 8556	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8579-X	DOT-E 8579	Austin Powder Company, Cleveland, OH.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8579-X	DOT-E 8579	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8614-X	DOT-E 8614	Arrowhead Airways, Inc., Minneapolis, MN.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8621-X	DOT-E 8621	I.T.O. Corporation, Gulfport, MS	49 CFR 176.415(c)(2)	To authorize loading or unloading of ammonium nitrate mixtures containing more than 60 percent ammonium nitrate with no organic coating at a non-isolated facility. (Mode 3.)
8627-X	DOT-E 8627	Champion Chemicals, Inc., Houston, TX.	49 CFR 173.119, 173.245, 178.253	To authorize an additional spring loaded vent on the non-DOT Specification portable tank. (Mode 1.)
8627-P	DOT-E 8627	Champion Chemicals, Inc., Houston, TX.	49 CFR 173.119, 173.245, 178.253	To become a party to exemption 8627 (Mode 1.)
8645-X	DOT-E 8645	A. M. Contracting, Grove City, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature. (Mode 1.)
8667-X	DOT-E 8667	Federal Emergency Management Agency, Washington, DC.	49 CFR 173.416, 175.3	To authorize use of CDV-794 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials. (Modes 1, 3, 4.)
8673-X	DOT-E 8673	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 Column 6(b), 175.30.	To authorize reinstatement and renewal of exemption. (Mode 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8678-X	DOT-E 8678	Eurotainer, S.A. Paris, France	49 CFR 173.315	To renew and change six month shipping experience report requirement to two years to correspond with renewal application. (Modes, 1, 2, 3.)
8678-X	DOT-E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315	To renew and change six month shipping experience report requirement to two years to correspond with renewal application. (Modes 1, 2, 3.)
8684-X	DOT-E 8684	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315(a)(1), 178.337(1)(c)(2)(ii).	To authorize use of DOT Specification MC-331 cargo tanks equipped with a manway cover not fully complying with 49 CFR 178.337-1(c)(2)(ii), for transportation of nonflammable gases. (Mode 1.)
8689-X	DOT-E 8689	Schlumberger Well Services, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, 4.)
8706-X	DOT-E 8706	International Technology Corporation, Martinez, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8710-X	DOT-E 8710	Akzo Chemicals Inc., formerly Akzo Chemie America, Chicago, IL.	49 CFR 173.119, 173.21, 173.221	To authorize transport of solutions of an organic peroxide in cargo tanks complying with DOT Specification MC-307 and MC-312. (Mode 1.)
8716-X	DOT-E 8716	Foote Mineral Company, Malvern, PA.	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8723-X	DOT-E 8723	Winchester Building Supply Co., Inc., Winchester, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	CONA, Inc.—Ireco Explosives, Tahlequah, OK.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 3.)
8723-P	DOT-E 8723	Minnesota Explosives Company Biwabik, MN.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 3.)
8742-X	DOT-E 8742	Cusco Fabricators Limited Ontario Canada, Richmond Hill, Ontario, C.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8751-X	DOT-E 8751	Delta Tech Service, Inc., Martinez, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340-7, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1.)
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(e)(1), 173.304(b)(1), 175.3, 178.42.	To authorize natural gas, classed as flammable gas, and crude oil, classed as flammable liquid, for shipment in non-DOT specification stainless steel cylinders. (Modes 1, 2, 3, 4.)
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize rail and water as additional modes of transportation. (Modes 1, 2, 3, 4.)
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of compressed gases. (Modes 1, 2, 3, 4.)
8781-X	DOT-E 8781	Mauser Packaging, Limited, Litchfield, CT.	49 CFR 171.12(c), 178.116-6(a), 178.116-7(a).	To amend exemption to permit concave top head where DOT-17E now requires convex head. (Modes 1, 2, 3.)
8865-X	DOT-E 8865	Carleton Technologies, Inc., East Aurora, NY.	49 CFR 173.302(a)(4), 175.3	To authorize gas reservoirs to be refilled a maximum of 5 times and to authorize refilling of the packaging. (Modes 1, 2, 4.)
8930-X	DOT-E 8930	General Aviation, Inc., Greeneville, TN.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8956-X	DOT-E 8956	Clif Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To manufacture, mark and sell certain steel cylinders for transporting samples of liquefied petroleum gas, oil well natural gas, and other petroleum hydrocarbon gases or liquids. (Modes 1, 3, 4.)
8965-X	DOT-E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
8977-X	DOT-E 8977	Eurotainer, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of a non-DOT specification IMO-Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, 3.)
8988-X	DOT-E 8988	GOEX, Inc., Cleburne, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8988-P	DOT-E 8988	Jet Research Center, Inc., Arlington, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (Modes 1, 3, 4.)
8999-X	DOT-E 8999	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY.	49 CFR 173.154, 175.3, 175.85, part 172, subpart C, subpart D, E.	To authorize transport of emergency oxygen generators without marking, labeling, shipping papers or specification packaging. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9004-X	DOT-E 9004	Metric Corporation, Tulsa, OK	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for transportation of flammable liquids and flammable gases. (Mode 1.)
9015-X	DOT-E 9015	Monsanto Chemical Company, Saint Louis, MO.	49 CFR 173.217	To amend exemption to include any manufacturer's non-DOT specification packaging, to increase the weight limit to 3000 lbs., and to allow shipments in full container loads in stack trains. (Modes 1, 2, 3.)
9026-X	DOT-E 9026	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 172.101, 175.3, 175.30, 178.224.	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3, 4.)
9027-X	DOT-E 9027	McGean-Rohco, Inc., Cleveland, OH.	49 CFR 178.131, 178.28(h), 178.28(m).	To authorize a one-time reuse of DOT Specification 37A (single-trip) drums, for shipment of chromic acid, solid and chromic acid mixture, classed as an oxidizer. (Modes 1, 2.)
9036-X	DOT-E 9036	The Marison Company, South Elgin, IL.	49 CFR 178.37-4(a), part 173, subparts G, H.	To authorize manufacture, marking and sale of billet pierced DOT Specification 3AA cylinders, for transportation of compressed and poisonous gases. (Modes 1, 2, 3, 4, 5.)
9040-X	DOT-E 9040	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corrosive liquids. (Modes 1, 2, 3.)
9052-X	DOT-E 9052	Chemical Handling Equipment Company, Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, part 173, subpart F.	To authorize use of a non-DOT specification rotationally molded, cross-linked or linear polyethylene portable tank enclosed in a steel cage or hardwood overpack for the shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9059-X	DOT-E 9059	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 172.202, 173.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for fluorine. (Modes 1, 2.)
9059-X	DOT-E 9059	Boeing Aerospace, Seattle, WA	49 CFR 172.101, 172.202, 173.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for fluorine. (Modes 1, 2.)
9061-X	DOT-E 9061	SSI Group, Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize shipment of a small quantity of a flammable solid labeled Flammable Solid and Dangerous When Wet but without a Flammable Solid W placard on the vehicle. (Modes 1, 2.)
9064-X	DOT-E 9064	Preussag Pure Metals GMBH Goslar, West Germany.	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corrosive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9064-X	DOT-E 9064	Corning Glass Works, Corning, NY	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corrosive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9064-X	DOT-E 9064	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada.	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corrosive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9066-P	DOT-E 9066	Automotive Systems Laboratory, Inc. (ASL) Farmington Hills, MI.	49 CFR 171.11 (see paragraph 8.d.).	To become a party to exemption 9066 (Modes 1, 2, 3, 4.)
9078-X	DOT-E 9078	Monsanto Chemical Company, St. Louis, MO.	49 CFR 173.245	To authorize use of DOT Specification 57 stainless steel portable tanks, for transportation of a waste formic acid/phenol mixture. (Mode 1.)
9079-X	DOT-E 9079	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315	To authorize use of carbon steel DOT Specification 51 portable tanks, for transportation of a liquefied compressed gas. (Modes 1, 3.)
9108-X	DOT-E 9108	The Ensign-Bickford Company and Distributors, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9108-X	DOT-E 9108	Ensign-Bickford Company, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9110-X	DOT-E 9110	Kemanord, Inc., Columbus, MS	49 CFR 173.163	To authorize shipment of sodium chlorate, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags. (Modes 1, 2, 3.)
9110-P	DOT-E 9110	Atochem S.A., 13011 Marseille, France.	49 CFR 173.163	To become a party to exemption 9110 (Modes 1, 2, 3.)
9141-X	DOT-E 9141	Bristol Flare Corporation, Bristol, PA.	49 CFR 172.101, 173.108	To authorize transport of certain hand signal devices, as a flammable solid instead of a class C explosive. (Mode 1.)
9142-X	DOT-E 9142	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	49 CFR 173.315, 178.245	To authorize use of a non-DOT Specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes, 1, 2, 3.)
9166-X	DOT-E 9166	Comptank, Corporation, Bothwell, Ontario, CN.	49 CFR 173.119 (a), (m), 173.346(a), 178.340, 178.342, 178.343, part 173, subpart F.	To update exemption reference for acoustic emission tests to the most recent edition of the published standard. (Mode 1.)
9192-X	DOT-E 9192	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2)	To authorize shipment of various refrigerated compressed gases classed as flammable gas in DOT Specification 4L-112 cylinders. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9193-X	DOT-E 9193	Schlumberger Well Services, Houston, TX.	49 CFR parts 100-199	To authorize shipment of a downhole logging tool (snode) that contains an accelerator housing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5.)
9222-X	DOT-E 9222	Willms Trucking Company, Inc. (WTC), Charleston Heights, SC.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)
9222-X	DOT-E 9222	Caldwell Systems, Inc. (CSI), Lenoir, NC.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)
9275-X	DOT-E 9275	McCormick & Company, Inc., Hunt Valley, MD.	49 CFR parts 100-199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, 5.)
9277-X	DOT-E 9277	FMC Corporation—Agricultural Chemical Group, Philadelphia, PA.	49 CFR 173.377(j)	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 2, 3.)
9281-P	DOT-E 9281	Western Atlas International, Inc., Houston, TX.	49 CFR 172.101, 173.100	To become a party to exemption 9281 (Modes 1, 2, 3, 4, 5.)
9371-X	DOT-E 9371	Ronson Aviation Incorporated, Trenton, NJ.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9377-P	DOT-E 9377	Austin Power Company, Cleveland, OH.	49 CFR 173.65(a)(5)	To become a party to exemption 9377 (Modes 1, 2, 3.)
9381-P	DOT-E 9381	Environmental Audit, Inc., Placentia, CA.	49 CFR 173.154	To become a party to exemption 9381 (Modes 1, 2.)
9381-P	DOT-E 9381	Western Zinc Corporation, Rancho Dominguez, CA.	49 CFR 173.154	To become a party to exemption 9381 (Modes 1, 2.)
9386-X	DOT-E 9386	Pacific Scientific, HTL Division, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize an additional material of construction for a non-DOT specification cylinder in which nitrogen, classed as nonflammable gas, is shipped. (Modes 1, 2, 4, 5.)
9402-X	DOT-E 9402	Arbel Fauvet Rail, St. Laurent-Balngy, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9402-X	DOT-E 9402	Atochem, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9402-X	DOT-E 9402	ALGECO, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9414-P	DOT-E 9414	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.302(a)(5)	To become a party to exemption 9414 (Modes 1, 3.)
9415-X	DOT-E 9415	Sonoco Plastic Drum, Inc., Lockport, Il.	49 CFR part 173, subpart D, E, F, H.	To authorize manufacture, marking and sale of a polyethylene drum of 30-gallon capacity conforming with DOT Specification 34 except for having a single opening of four-inch diameter, for shipment of those hazardous materials authorized in DOT Specificationi 34 and DOT Specifications 21C drums. (Modes 1, 2, 3.)
9416-P	DOT-E 9416	Hess and Clark, Inc., Ashland, OH	49 CFR 173.359	To become a party to exemption 9416 (Modes 1, 2, 3.)
9416-X	DOT-E 9416	Platte Chemical Company, Fremont, NE.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transportation. (Modes 1, 2, 3.)
9418-X	DOT-E 9418	West Texas Fabrication, Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize shipment of certain compressed gases classed as flammable and nonflammable in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks. (Mode 1.)
9425-X	DOT-E 9425	American Chemical & Refining Company, Inc., Waterbury, CT.	49 CFR 177.848	To authorize transport of certain alkaline corrosive solutions in the same vehicle with gold and silver cyanide solutions. (Mode 1.)
9441-X	DOT-E 9441	Amtrol, Incorporated, West Warwick, RI.	49 CFR 173.306(g)(1), part 172, subpart D, E.	To authorize manufacture, marking and sale of non-DOT specification steel water pump system tanks with outside diameter not exceeding 26 inches, for transportation of nonflammable gases. (Modes 1, 2, 3.)
9481-X	DOT-E 9481	Atlas Powder Company, Dallas, TX	49 CFR 173.77	To authorize transport of PETN wet with 25 percent water in plastic bags packed in fiberboard boxes instead of metal drums. (Mode 1.)
9485-X	DOT-E 9485	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.305	To authorize an increase in total vapor pressure for mixtures shipped under the exemption, from 140 psig at 130 degrees F to 286 psig at 130 degrees F. (Modes 1, 2, 3.)
9486-X	DOT-E 9486	Bver, Inc., Chester, WV	49 CFR 173.119(a), (m), 173.245(a), 173.342-5, 173.345(a), 178-340-7, 178.343-5.	To authorize use of a non-DOT specification cargo tank designed and constructed in full compliance with DOT Specification MC-307/312, with exceptions, for transportation of a liquid and semi-solid waste material. (Mode 1.)
9487-X	DOT-E 9487	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.304	To authorize transport of an insecticide classed as a nonflammable compressed gas in DOT Specification 39 cylinders. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9498-P	DOT-E 9498	Cominco Fertilizers/A Division of Cominco Ltd., Calgary, Alberta, CN.	49 CFR 173.365, 173.367, 173.370	To become a party to exemption 9498 (Modes 1, 2, 3.)
9580-X	DOT-E 9580	McDonnell Douglass Corporation, St. Louis, MO.	49 CFR 173.120(b)	To authorize transport of internal combustion engines with flammable liquids in their fuel tanks, as part of non-self propelled apparatus, as essentially not subject to the requirements of 49 CFR Parts 100-199. (Mode 1.)
9580-X	DOT-E 9580	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 173.120(b)	To authorize transport of internal combustion engines with flammable liquids in their fuel tanks, as part of non-self propelled apparatus, as essentially not subject to the requirements of 49 CFR Parts 100-199. (Mode 1.)
9601-X	DOT-E 9601	Trical, Inc., Hollister, CA	49 CFR 173.357, 173.3a	To authorize shipment of liquid, 100% chloropicrin, a Class B poison, in non-DOT specification zinc-plated steel drums, not exceeding 26-gallon capacity. (Modes 1, 3.)
9607-P	DOT-E 9607	A.H. Robins Company, Richmond, VA.	49 CFR parts 100-199	To become a party to exemption 9607 (Modes 1, 4, 5.)
9623-P	DOT-E 9623	Ireco Incorporated, Salt Lake City, UT.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1.)
9663-X	DOT-E 9663	Siepe GmbH, Federal Republic Germany.	49 CFR 178.134, 178.35a, part 173	To authorize manufacture, marking and sale of cylindrical steel, overpacks similar to DOT-37M except wall thickness is 25 gage instead of 24 gage and inner polyethylene drum meets DOT-2SL except for marking, for shipment of those hazardous materials authorized in DOT-37M/2SL. (Modes 1, 2, 3.)
9666-X	DOT-E 9666	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.34(e), part 107, Appendix B.	Reinstatement of exemption that authorizes materials classed as metal alkyls solution for shipment in DOT Specification 4BA and 4BW cylinders, which are hydrostatically tested every 10 years rather than 5 years. (Modes 1, 3.)
9676-P	DOT-E 9676	J.T. Baker Inc., Phillipsburg, NJ	49 CFR 173.119(b)(4), 173.125, 178.205.	To become a party to exemption 9676 (Mode 1.)
9678-X	DOT-E 9678	Rossborough Manufacturing Company, Avon Lake, OH.	49 CFR 173.154	To authorize shipment of various mixtures: Magnesium granules 0 to 30 percent; Salt-coated magnesium granules 0 to 30 percent; Calcium carbide 40 to 90 percent; and Calcium oxide 5 to 20 percent classed as flammable solids. (Mode 1.)
9681-X	DOT-E 9681	ICI Americas Inc./Pyrotechnic Specialties Bryon, GA.	49 CFR 173.65	To authorize limited quantities of Class A, Type 4 explosives, to be placed in special packaging not prescribed in 49 CFR. (Modes 1, 3, 4.)
9688-X	DOT-E 9688	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.247	To authorize shipment of thionyl chloride, classed as a corrosive material in non-DOT specification bottles of "Teflon" PFA, ranging in size from 10 to 16 ounces capacity, overpacked in DOT Specification 17H stainless steel drums, not to exceed 54 bottles per drum. (Mode 1.)
9701-X	DOT-E 9701	Trimeg Holdings, Ltd., Calgary, Alberta, CN.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of no more than 2,500 pounds each, and top and/or bottom outlets, for shipment of flammable and corrosive solids and oxidizer (solids only). (Modes 1, 2, 3.)
9708-X	DOT-E 9708	U.S. Department of Energy, Washington, DC.	49 CFR 173.220(b)	To authorize shipment of magnesium metal pellets, a flammable solid, in DOT Specification 44-C multiwall paper bag. (Mode 1.)
9711-P	DOT-E 9711	Konica Corporation, Tokyo, Japan	49 CFR 173.245(a)(12), 175.3	To become a party to exemption on 9711 (Modes 1, 2, 4.)
9714-X	DOT-E 9714	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.359	To authorize shipment of "Bidrin" 8 insecticide, classed as a Poison B liquid, in DOT Specification high density polyethylene containers. (Modes 1, 2, 3.)
9718-X	DOT-E 9718	Eurotainer, US Inc., 75008, Paris, France.	49 CFR 173.315, 178.245	To authorize shipment of certain compressed gases classed as flammable and nonflammable in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks. (Modes 1, 2, 3.)
9719-X	DOT-E 9719	Great Southern Airways, Orlando, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or in quantities greater than those prescribed for shipment by air. (Mode 4.)
9723-P	DOT-E 9723	BD Technology, Inc., Arcadia, CA	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1.)
9742-X	DOT-E 9742	Bromine Compounds, Ltd., Beer-Sheva, Israel.	49 CFR 173.353, 178.245	To manufacture, mark and sell non-DOT specification steel portable tanks for shipping methyl bromide, liquid classed as poison B. (Modes 1, 2, 3.)
9744-X	DOT-E 9744	Akzo Chemicals, Inc., Chicago, IL	49 CFR 173.157(a)(5)	To increase the new weight authorized per package from 31.5 pounds to 32 pounds. (Mode 1.)
9745-P	DOT-E 9745	Whitmire Research Laboratories, Inc., St. Louis, MO.	49 CFR 173.1200(a)(8), 173.306(a), (b), (c), 175.3, 178.33.	To become a party to exemption 9745 (Modes 1, 2, 3, 4.)
9746-X	DOT-E 9746	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.264	To authorize use of DOT Specification 3BN cylinders for transportation of hydrogen fluoride, anhydrous. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9749-X	DOT-E 9749	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 172.203(c)(1), 172.324(a)	To authorize shipment of a material containing a hazardous substance without listing the name of the hazardous substance on the shipping papers and on the package when transported by private or contract carriers. (Mode 1.)
9750-X	DOT-E 9750	Atlas Powder Company, Dallas, TX	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC-307 insulated cargo tank or a DOT Specification MC-311 insulated cargo tank. (Mode 1.)
9750-X	DOT-E 9750	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC-307 insulated cargo tank or a DOT Specification MC-311 insulated cargo tank. (Mode 1.)
9750-X	DOT-E 9750	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC-307 insulated cargo tank or a DOT Specification MC-311 insulated cargo tank. (Mode 1.)
9752-X	DOT-E 9752	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354(a)(7)	To authorize shipment of motor fuel antiknock compound, class B poison, in a DOT Specification 12B fiberboard box with inside packaging consisting of an inner metal can, surrounded by vermiculite and then hermetically sealed in an outer metal can. (Modes 1, 3, 4.)
9761-X	DOT-E 9761	Systron Donner, Safety Systems Division, Concord, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize an increase of nominal water capacity from 75 cubic inches to 224 cubic inches (nominal). (Modes 1, 4.)
9763-X	DOT-E 9763	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.247, 173.302(a), 173.328(a).	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 3.)
9765-X	DOT-E 9765	3M, St. Paul, MN	49 CFR 173.124(a)(3)	To authorize shipment of ethylene oxide classed as a flammable liquid, contained in aluminum cartridges and cushioned in molded expanded polystyrene trays, overpacked in a DOT Specification 12B15 corrugated fiberboard box. (Modes 1, 2, 3, 4.)
9766-X	DOT-E 9766	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.92	To authorize use of non-DOT specification fiber drums containing not more than 9 TOW M114 Rocket Motors. (Modes 1, 3, 4, 5.)
9775-X	DOT-E 9775	Essex Environmental Industries, Inc., Hurst, TX.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of polyethylene, removable head salvage drum of 85-gallon for overpacking of damaged or leaking packages of hazardous materials of no greater than 55-gallon, or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)
9785-P	DOT-E 9785	Crowley Towing and Transportation Co., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	Crowley Caribbean Transport, Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	Trailer Marine Transport Corp., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	American Transport Lines Inc., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	Euro-Gulf International Inc., Houston, TX.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	Australia-New Zealand Direct Line, Long Beach, CA.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785-P	DOT-E 9785	Ocean Star Container Lines, Jersey City, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9801-X	DOT-E 9801	Phelps Dodge Corporation, Phoenix, AZ.	49 CFR 173.31(c)(2) and footnote (d) of Table 1.	To authorize retesting of DOT Specification 111A100W2 tank car tanks, over ten years of age, with sulfuric acid in lieu of water. (Mode 2.)
9808-X	DOT-E 9808	Apache Powder Company, Benson, AZ.	49 CFR 173.182(a)(1), 175.3	To authorize shipment of ammonium nitrate-potassium nitrate, identified as ANKN 90/10, classed as an oxidizer, in a moisture resistant, multi-ply paper bag. (Modes 1, 3, 4.)
9811-X	DOT-E 9811	Container Products Corporation, Wilmington, NC.	49 CFR 173.365	To authorize use of a "T-Bolt" closure. (Mode 1.)
9819-X	DOT-E 9819	Halliburton Company, Duncan, OK	49 CFR 173.119, 178.253, part 173, subpart F.	To authorize the deletion of the prototype testing requirement and the delection of the cargo tank marking and placarding requirement. (Mode 1.)
9858-X	DOT-E 9858	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(2)	To authorize a change of improper reference to 2P containers, an increase in equilibrium pressure of the lading at 130 degrees Fahrenheit from 160 psig to 170 psig an increase in the total weight of the package . (Mode 1.)
9878-X	DOT-E 9878	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.365(a)(2)	To authorize shipment of a solid waste, classed as a Class B poison, contained in 55-gallon capacity, DOT Specification 17C drums. (Mode 1.)
9912-X	DOT-E 9912	Poly Processing Company & Poly Cal Plastics, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, part 173, subpart F.	To authorize an additional closure system for the non-DOT Specification portable tank. (Modes 1. 2. 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9946-P	DOT-E 9946	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, 3.)
9971-P	DOT-E 9971	J.T. Baker, Inc., Phillipsburg, NJ	49 CFR 173.119(a)(23), 173.245(a)(18), 175.3, 178.210.	To become a part to exemption 9971. (Modes 1, 4.)
10001-P	DOT-E 10001	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10032-P	DOT-E 10032	MCM, Management Control & Maintenance, S.A., Geneva, Switzerland.	49 CFR 173.315, 178.245	To become a party to exemption 10032. (Modes 1, 2, 3.)
10048-P	DOT-E 10048	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.134, 173.154, 173.28(m).	To become a party to exemption 10048. (Modes 1, 3.)
10089-P	DOT-E 10089	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.206, 178.61	To become a party to exemption 10089. (Modes 1, 2, 3.)
10103-P	DOT-E 10103	N.N.B.—Orion, Inc., Rochester Hills, MI.	49 CFR parts 100–177	To become a party to exemption 10103. (Mode 1.)
10108-P	DOT-E 10108	Moses Lake, Industries, Moses Lake, WA.	49 CFR 173.150 to 173.381, 178.19–2, 178.19–6.	To become a party to exemption 10108. (Modes 1, 3.)
10108-P	DOT-E 10108	Olin Hunt Specialty Products Inc., West Paterson, NJ.	49 CFR 173.150 to 173.381, 178.19–2, 178.19–6.	To become a party to exemption 10108. (Modes 1, 3.)
10126-X	DOT-E 10126	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.420	To reissue an exemption authorizing transportation of lithium batteries containing parallel branches of series connected cells without diodes by motor vehicles and cargo aircraft. (Modes 1, 4.)
10127-X	DOT-E 10127	Morton Thiokol, Inc. Huntsville, AL	49 CFR 173.92	To reissue an exemption authorizing shipment of a rocket motor with the igniter installed, by motor vehicle, previously issued as an emergency exemption. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9758-N	DOT-E 9758	Camping Gaz Int'l (nee Application des Gaz S.A.), Paris, France.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize shipment of certain flammable gases in a nonrefillable, non-DOT specification inside container conforming with the DOT Specification 2P except for diameter and capacity. (Modes 1, 2, 3.)
9849-N	DOT-E 9849	Southern Air Transport, Inc., Miami, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.3, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage by cargo-only aircraft those Class A, B, and C explosive that are not permitted or that in quantities greater than prescribed for air shipment. (Mode 4.)
9912-N	DOT-E 9912	Poly Processing Company & Poly Cal Plastics, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, part 173, subpart F.	To authorize manufacture, marking and sale of a non-DOT specification polyethylene tank in a steel frame for the shipment of certain materials classed as corrosive material, oxidizer, flammable liquid, and blasting agent. (Modes 1, 2, 3.)
9967-N	DOT-E 9967	Department of Energy, Washington, DC.	49 CFR 173.420(a)(4)	To authorize shipment of Uranium hexafluoride, classed as Radioactive material, low specific activity, in a non-DOT specification cylinder that contains more material than is prescribed. (Mode 1.)
10000-N	DOT-E 10000	Flight International, Newport News, VA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320, part 107, Appendix B.	To authorize transport of explosives that are forbidden for transport by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10007-N	DOT-E 10007	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.249, 175.3	To authorize shipment of materials described as alkaline corrosive liquid, n.o.s., classed as Corrosive material, in a non-DOT composite packaging consisting of a tin can in a polyethylene insert within a DOT Specification 37A steel drum. A steel drum. (Modes 1, 2, 3, 4.)
10008-N	DOT-E 10008	Thermex Energy Corporation, Dallas, TX.	49 CFR 172.101 table, Column (6)(b), 175.30.	To authorize shipment of Detonating cord, Class A explosive by air. (Mode 4.)
10019-N	DOT-E 10019	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a)(1), 175.3	To authorize manufacture marking and sale of non-DOT Specification fiber reinforced plastic cylinders for the shipment of certain compressed gases, classed as Nonflammable gas. (Modes 1, 2, 3, 4, 5.)
10021-N	DOT-E 10021	Thermacore, Inc., Lancaster, PA	49 CFR 173.304(a)(2)	To authorize shipment of Ammonia anhydrous, classed as Nonflammable gas, in non-DOT Specification pressure vessels described as heat pipes. (Mode 1.)
10035-N	DOT-E	10035 Allied Drum Service, Louisville, KY	49 CFR 173.28(o), 178.115–10(a)	To recondition, convert, mark and sell a non-Dot specification, 16-guage 55-gallon steel drum to an open head, DOT-17C drum, for shipment of certain hazardous materials. (Modes 1, 2, 3.)
10043-N	DOT-E	10043 Texas Instruments, Inc. Dallas, TX.	49 CFR 173.12	To authorize shipment of various hazardous waste materials, classed as flammable liquid, flammable solid, corrosive liquid, poison B or ORM-A, B, C and E in inside packagings ranging in size from 1 pint to 55 gallon drums in outside polyethylene bins with a 30 cubic foot capacity (Modes 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10048-N	DOT-E	10048 Epichem, Inc., Bethlehem, PA.	49 CFR 173.119, 173.134, 173.154, 173.28(m).	To authorize shipment of certain pyrophoric liquids, n.o.s., flammable liquids, n.o.s. and flammable solids, n.o.s. in non-DOT specification stainless steel cylinders (bubblers) over packed in 17C open head drums. (Modes 1, 3.)
10050-N	DOT-E	10050 Ceodeux, S.A., Lintgen, Luxembourg.	49 CFR 173.237(a)	To authorize use of pneumatically operated valves on cylinders containing poison A materials in lieu of the required packless valve having a handwheel. (Mode 1.)
10055-N	DOT-E	10055 Utensco, Port Washington, NY.	49 CFR 175.3, 178.115, 178.116, 178.117, 178.118, 178.80, 178.81, 178.82.	To authorize manufacturing, marking and sale of drums conforming to the DOT specs 5, 5A, 5B, 17C, 17E, 17F and 17H except that during manufacture the periodic hydrostatic and drop tests would not be required for shipment of those hazardous materials presently authorized in the DOT spec 5 and 17 drums. (Modes 1, 2, 3, 4.)
10056-N	DOT-E	10056 Mauser Packaging Limited, Litchfield, CT.	49 CFR 178.116-7(a)	To authorize manufacture, marking and sale of drums conforming to the DOT specification 17E except for having concave top head for shipment of those hazardous materials, presently authorized in DOT 17E drums. (Modes 1, 2, 3.)
10062-N	DOT-E	10062 Callery Chemical Company, Pittsburgh, PA.	49 CFR 173206	To authorize shipment of potassium, classed as a flammable solid, in DOT specification 4BA240 and 4BW240 steel cylinders. (Modes 1, 2, 3.)
10073-N	DOT-E	10073 Sonoco Fibre Drum Inc., Lombard, IL.	49 CFR part 173 subparts D, F, H	To authorize manufacture, marking and sale of non-DOT specification integrally lined fibre drum for shipment of corrosive liquids, flammable liquids and poison B liquids, fication 17E or composite packaging 21P/2U, 21P/2SL, 37M/2U. (Modes 1, 2, 3.)
10074-N	DOT-E	10074 Environmental Response Corporation, Santa Maria, Ca.	49 CFR 173.119, 173.121, 173.125, 173.128, 173.131, 173.139, 173,141, 173.144, 173.148, 173.149a, 173.245, 173.249, 173.255, 173.273, 178.81.	To authorize the manufacture, marking and sale of a non-DOT specification waste steel container similar to the DOT spec. 5A steel barrel for shipment of various flammable and combustible, liquids, flammable solids and corrosive materials. (Modes 1, 2.)
10075-N	DOT-E	10075 Jet Fleet Corporation, Dallas, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B".	To authorize transport of certain Class A, B, and C explosives that are forbidden for transportation by air or are in quantities greater than prescribed for air transportation. (Mode 4.)
10082-N	DOT-E	10082 SternAir, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B, subpart B.	To authorize transport of certain Class A, B and C explosives that are forbidden for carriage by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10088-N	DOT-E	10088 Hedwin Corporation, Baltimore, MD.	49 CFR 178.211, part 173 subparts D and F.	To authorize manufacture, marking and sale of non-DOT specification fiberboard boxes with an inside container meeting the DOT 2U specification, for transportation of corrosive liquids and flammable liquids (Modes 1, 3, 5.
10090-N	DOT-E 10090	Clawson Tank Company, Clarkson, MI.	49 CFR 173.266, 178.19, 178.253, part 173, subparts D and F.	To authorize manufacture marking, and sale of a rotationally molded, reusable polyethylene tank within a wire frame enclosure for transport of certain Flammable liquids, Corrosive materials and Oxidizers. (Modes 1, 2.)
10092-N	DOT-E 10092	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.91(a)(2), 173.91(a)(6)	To authorize shipment of an Illuminating projectile, Class B explosive with projectiles set in a pallet base with a support cover held in place by strapping. (Mode 1.)
10093-N	DOT-E 10093	Olin Chemicals, Stamford, CT	49 CFR 173.182	To authorize shipment of Sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3.)
10096-N	DOT-E 10096	Alby Klorat AB, S-774 00, Avesta, Sweden.	49 CFR 173.163	To authorize shipment of Potassium chlorate classed as an oxidizer packed in 4-ply paper bags with a plastic lining, 56 bags of 25kg each, on a wooden pallet, shrink wrapped in plastic. (Modes 1, 2, 3.)
10102-N	DOT-E 10102	ENPAC Corporation, Jacksonville, FL.	49 CFR 173.3(c) part 173, subparts D, E, F, H.	To authorize manufacture, marking, and sale of a polyethylene, removable head drum not to exceed 20 gallon capacity for overpacking damaged or leaking packaging for disposal of hazardous materials that have spilled or leaked; or for transporting certain hazardous materials. (Modes 1, 3.)
10103-N	DOT-E 10103	General Motors Corporation, Warren, MI.	49 CFR parts 100-177	To authorize shipment of a sodium azide-based air bag module, classed as an explosive Power Device Class C, packaged in a foam molded polyethylene copolymers on a high density polyethylene pallet contained by stretch wrapping as an unregulated item. (Mode 1.)
10108-N	DOT-E 10108	Motorola Inc., Phoenix, AZ	49 CFR 173.150 to 173.381, 178.19-2, 178.19-6.	To authorize use of polyethylene drums manufactured without ultraviolet light stabilizer for shipment of certain hazardous materials that are authorized to be transported in DOT Specification 34 polyethylene drums. (Modes 1, 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10109-N	DOT-E 10109	National Aeronautics and Space Administration, Kennedy Space Center, FL.	49 CFR 173.316, 178.57	To authorize shipment of air, refrigerated liquid (cryogenic liquid), classed as a nonflammable gas, in a non-DOT Specification double walled stainless steel 3.5 liter liquid air dewar. (Mode 1.)
10114-N	DOT-E 10114	American Airlines, DFW Airport, TX	49 CFR 173.200, 175.10, 175.3	To authorize deadheading of up to six oxygen units, to be used for passenger medical service, in the passenger cabin of an airplane. (Mode 5.)
10117-N	DOT-E 10117	Blackman Uhler Chemical Division, Augusta, GA.	49 CFR 173.365	To authorize shipment of Dinitrochlorobenzene, classed as a Poison B, in a DOT Specification MC 307 stainless steel cargo tank, insulated and equipped with heating coils to keep material temperature above 113 degrees F. (Mode 1.)
10118-N	DOT-E 10118	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.31(c), 179.201-1	To authorize shipment of nitric acid in a DOT Specification 103A-ALW tank car tank which is equipped with a 45 psi safety relief valve. (Mode 2.)
10122-N	DOT-E 10122	Atochem 92091, Paris, France	49 CFR 173.119(b), 173.21(b), 175.30(a).	To authorize use of a non-DOT specification insulated inside container for a specific flammable liquid solution. (Modes 1, 4.)
10131-N	DOT-E 10131	Fomo Products Inc., Norton, OH	49 CFR 173.1200(a)(8), 173.305(c), 173.306(a)(3), 178.33a.	To authorize transport of certain hazardous materials in a container conforming with the DOT Specification 2Q except for size, marking and test. (Modes 1, 2, 3.)
10133-N	DOT-E 10133	Goex, Inc., Claburne, TX	49 CFR 173.100(hh), 173.53(g)(2), 173.86, 175.3.	To authorize transport of certain Class A detonating primers, in which the total explosive weight is more than 25 grams but less than 41 grams, as Class C detonating primers in quantities and packagings specified. (Modes 1, 2, 3, 4.)
10143-N	DOT-E 10143	Eurocom Imports, Inc., Dallas, TX	49 CFR 173.306(a), 178.33a	To authorized shipment of non-flammable compressed gas mixtures (Neon—Argon and Helium—Neon) and neon, classed as non-flammable gas in a non-DOT specification aluminum seamless cylinder similar to the DOT spec 39 cylinder. (Modes 1, 2.)
10145-N	DOT-E 10145	Automatic Sprinkler Corporation of America, Cleveland, OH.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell DOT Specification cylinders equipped with a fusible safety relief device to be used as a fire extinguisher and charged with a nonflammable liquefied compressed gas. (Mode 1.)
10149-N	DOT-E 10149	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.31(c)(13)(iv)	To authorize transport of flammable cryogenic liquids in a DOT 113A60W-2 specification tank car tanks without replacing the outer jacket frangible disc every year as required. (Mode 2.)
10157-N	DOT-E 10157	Now Technologies, Inc., Bloomington, MN.	49 CFR 173.272	To authorize manufacture, marking and sale of a DOT Specification 3E or 2U high density polyethylene bottle fitted with an internal teflon pouch, overpacked up to four bottles to a fiberboard carton, for the shipment of up to 98% sulfuric acid. (Mode 1.)
10165-N	DOT-E 10165	U.S. Olympic Festival '89, Oklahoma City, OK.	49 CFR 173.118, 173.31, 175.30, 175.85, part 107, Appendix B, part 172, subparts C, D, E.	To authorize carriage of a small quantity of a flammable liquid in two safety lamps onboard an aircraft. (Mode 5.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453-X	DOT-E 4453	Maynes Explosives Company, Lee's Summit, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453-X	DOT-E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel mixturs. (Modes 1, 3.)
EE 6614-X	DOT-E 6614	Steelcrete Company, Novi, MI	49 CFR 173.263(a)928), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 8167-X	DOT-E 8167	Manostat Corporation, New York, NY.	49 CFR 173.287, 175.3	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystryene/glass bottle inside packaging. (Modes 1, 2, 3, 4.)
EE 8363-X	DOT-E 8363	IMR Powder Company, Plattsburgh, NY.	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT Specification 12H 65 fiberboard boxes. (Modes 1, 3.)
EE 8426-p	DOT-E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8518-X	DOT3-E 8518	Universal Engineering Incorporated, Concord, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or posion B materials. (Mode 1.)
EE 8518-P	DOT-E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
EE 8554-X	DOT-E 8554	Minnesota Explosives Company, Biwabik, MN.	49 CFR 173.114a, 173.154, 173.93.	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
EE 8554-X	DOT-E 8554	Piedmont Explosives, Inc., Statesville, NC.	49 CFR 173.114a, 173.154, 173.93.	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
EE 8723-X	DOT-E 8723	Cherokee Explosives, Inc., Plainville, CT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8751-X	DOT-E 8751	Delta Tech Service, Inc., Martinez, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340-7, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1.)
EE 8965-X	DOT-E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
EE 9077-X	DOT-E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR parts 100-177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 guage galvanized steel. (Mode 1.)
EE 9108-X	DOT-E 9108	Ensign-Bickford Company, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
EE 9416-X	DOT-E 9416	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To authorize shipment of organophosphorous pesticide, liquid, in a DOT Specification 12P fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallons capacity. (Modes 1, 2, 3.)
EE 9416-X	DOT-E 9416	CIBA-GEIGY Corporation, Ardsley, NY.	49 CFR 173.359	To authorize shipment of organophosphorous pesticide, liquid, in a DOT Specification 12P fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallons capacity. (Modes 1, 2, 3.)
EE 9678-X	DOT-E 9678	Rossborough Manufacturing Company, Avon Lake, OH.	49 CFR 173.154	To authorize use of dry bulk tank semi-trailers for shipment of magnesium and calcium salt mixtures. (Mode 1.)
EE 9713-X	DOT-E 9713	Acadia Industries, Inc., Crowley, LA.	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and oxidizers (solid only). (Modes 1, 2, 3.)
EE 9801-X	DOT-E 9801	Phelps Dodge Corporation, Phoenix, AZ.	49 CFR 173.31(c)(2) and footnote (d) of Table 1.	To authorize retesting of DOT Specification 111A100W2 tank car tanks, over ten years of age, with sulfuric acid in lieu of water. (Mode 2.)
EE 10089-N	DOT-E 10089	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.206, 178.61	To authorize shipment of Potassium metal classed as a flammable solid in non-DOT cylinders similar to the DOT specification 4BW cylinders except that they are constructed of Type 304, 316 and 347 stainless steel. (Modes 1, 2, 3.)
EE 10159-N	DOT-E 10159	Novamax Technologies, (U.S.), Inc., Atlanta, GA.	49 CFR 173.154, 173.245, 173.266.	To authorize use of ¾ inch vent plugs in DOT Specification 17E and DOT Specification 34 drums for certain corrosive and oxidizer materials. (Mode 1.)
EE 10160-N	DOT-E 10160	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E), 178.33a-2.	To authorize use of non-DOT specification containers which conform in part with the DOT Specification 2Q, for transportation of compressed gas, n.o.s. (Mode 1.)
EE 10180-N	DOT-E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10182-N	DOT-E 10182	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.31(b)	To authorize a one time shipment of acetaldehyde in a DOT Specification 103ALW tank car tank with defective bottom outlet piping. (Mode 2.)
EE 10183-N	DOT-E 10183	Atlas Powder Company, Dallas, TX.	49 CFR 172.101, 175.30	To authorize the transportation of detonators, Class A explosives, aboard cargo aircraft. (Mode 4.)
EE 10184-N	DOT-E 10184	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.34(e)(10), 173.34(e)(9).	To authorize the shipment of a specific gas mixtue in DOT Specification 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34(e)(9) and (e)(10). (Modes 1, 2, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10185–N	DOT–E 10185	Dow Chemical Company, Plaquemine, LA.	49 CFR 173.29(c)(2), 179.102–2	To authorize the transportation of a DOT Specification 105A500W tank car tank with a defective safety relief valve for the transportation of chlorine residue. (Mode 2.)
EE 10186–N	DOT–E 10186	E.I. du Pont de Nemours & Company, Wilmington, DE.	49 CFR 179.105–4	To authorize the transportation of certain DOT Specification 112T tank car tanks with nonconforming thermal protection systems. (Mode 2.)
EE 10189–N	DOT–E 10189	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.29(c)	To authorize a one time shipment of a residue of chlorine in a DOT Specification 105A500W tank car tank with a defective gasket under the manway cover plate. (Mode 2.)
EE 10191–N	DOT–E 10191	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.31(b)	To authorize a one time shipment of a residue of chlorine in a DOT Specification 105A500W tank car tank with a defective vapor valve. (Mode 2.)
EE 10192–N	DOT–E 10192	Eli Lilly and Company, Indianapolis, IN.	49 CFR 173.125, 178.205	To authorize use of a DOT Specification 12B corrugated fiberboard box with handholes with four inside polyethylene bottles. (Mode 1.)
EE 10196–N	DOT–E 10196	Penox Technologies Inc., Pittston, PA.	49 CFR 173.316, 178.57–2, 178.57–8(c).	To authorize manufacture, marking and sale of insulated non-DOT specification cylinders conforming with 49 CFR 178.57 except 178.57–2 and 178.57–8(c). (Mode 1.)
EE 10198–N	DOT–E 10198	ARCO Alaska, Inc., Anchorage, AK.	49 CFR 172.001	To authorize the transportation of ammonium bisulfite solution in 55-gallon drums. (Mode 4.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulations(s) affected	Nature of exemption thereof
6610–X	ARCO Chemical Company, Newtown Square, PA.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC–307 cargo tanks. (Modes 1, 2.)
7482–X	Monsanto Company, St. Louis, MO	49 CFR 173.245b(a)(6)	To authorize use of reconditioned non-DOT specification blow-molded high molecular weight polyethyline drum, for shipment of certain corrosive solid waste materials. (Mode 1.)
8017–X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To authorize use of DOT Specification 3AX, 3AAX, or 3T cylinders, for transportation of a flammable gas. (Mode 1.)
8151–P	Epoxylite Coropration, Irvine, CA	49 CFR 178.19, part 173, subparts, D, F.	To become a party to exemption 8151 (Modes 1, 2, 3.)
8273–X	TRW, Inc., Romeo, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram. (Modes 1, 2, 3, 4.)
8273–X	TRW Vehicle Safety Systems, Inc., Romeo, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram. (Modes 1, 2, 3, 4.)
8656–X	Texas Nuclear Corporation, Austin, TX	49 CFR 173.302, 175.3	To authorize the shipment of nonflammable gasses in non-DOT specification metal, single-trip, inside containers. (Modes 1, 2, 3, 4, 5.)
8958–X	Track of the Wolf, Inc., Brooklyn Park, MN.	49 CFR 172.101, 173.60	To authorize transport of limited quantities of black power, classed as a flammable solid, in DOT Specification 12H fiberboard boxes. (Modes 1, 2.)
9762–N	Aqua-Tech, Inc., Port Washington, WI	49 CFR part 173, subpart D, E, F, H, subpart K, L, O.	To authorize shipment of empty containers (5 gallon capacity or less) which contain residual amounts of various hazardous materials to be loaded, based on compatibility in a bulk fiberboard box, lined with 0.006 inch polyethylene film, for disposal. (Mode 1.)
10005–N	Mobay Corporation, Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corrosive liquid, poisonous, n.o.s., classed as Corrosive material, in a non-DOT composite packaging consisting of 4 polystyrene enclosed glass bottles packaged inside a fiberboard box. (Mode 1.)
10036–N	Action-Pak, Inc., Bristol, PA	49 CFR 173.113	To authorize shipment of detonating fuze, Class C explosive, in a DOT specification 23F65 box containing a gross weight of 75 pounds, consolidated 12 cartons on a skid which is shrink-wrapped. (Mode 1.)
10061–N	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.266(e)	To authorize shipment of hydrogen peroxide concentrations, not exceeding 52%, classed as an oxidizer, in non-DOT specification tote bins. (Mode 1.)

Denials

10004–N Request by Atlantic Research Corporation Camden, AR to authorize shipment of Ammonium percholorate, classed as Oxidizer, in non-DOT Specification tanks, similar in design to the Association of American Railroad 207W railcar tanks denied April 11, 1989.

10939–N Request by Vertex Chemical Corporation St. Louis, MO to allow tank cars of liquid chlorine, classed as a nonflammable gas, to have the unloading device left in place with unloading incomplete and the tank car left unattended denied April 13, 1989.

10070–N Request by Williams Pipe Line Company Coralville, IA to authorize use of a non-DOT 1500 gallon capacity vacuum trailer for transporting waste or spilled gasoline, and crude oil, classed as flammable liquids, and fuel oil classed as a combustible liquid denied April 6, 1989.

10121–N Request by Union Pacific Railroad Company Omaha, NE to authorize filling of IM portable tanks or compartments thereof having a volume greater than 1900 gallons to be loaded to a filling density less than 80% by volume denied April 19, 1989.

10121–P Request by Union Pacific's BulkTainer Omaha, NE to authorize filling of IM portable tanks or compartments thereof having a volume greater than 1900 gallons to be loaded to a filling density less than 80% by volume April 19, 1989.

9340–X Pioneer Plastics & Services Co., Ltd., Brampton, Ontario, Canada to renew exemption authorizing the manufacture, mark and sale of non-DOT specification polyethylene portable tanks for shipment of certain hazardous materials. The renewal is denied based on the failure of the manufacture to comply with the exemption criteria. See **Federal Register** Notice dated May 5, 1989, Volume 54 No. 86 page 19481.

Issued in Washington, DC, on November 21, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–28760 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July—October 1989. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3004–X	DOT–E 3004	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable, and nonflammable compressed gases. (Modes 1, 2, 4, 5.)
3004–X	DOT–E 3004	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certian flammable, and nonflammable compressed gases. (Modes 1, 2, 4, 5.)
3095–X	DOT–E 3095	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.119(a), 173.245(a), 173.248(a), 173.263(a), 173.264, 173.283, 173.289, 179.342–5, 178.343–5.	To authorize use of a non–DOT specification cargo tank, for shipment of certain hazardous materials. (Modes 1, 3.)
3128–X	DOT–E 3128	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.304, 175.3	To authorize use of non-DOT specification cylinders, for transportation of a Class C explosive and a liquefied nonflammable gas. (Modes 1, 2, 3, 4.)
3415–X	DOT–E 3415	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	To authorize shipment of rocket motors, containing certain Class A or Class B explosives, without overpacking. (Mode 1.)
3549–X	DOT–E 3549	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a), 173.77	To renew and to authorize use of an optional polyethylene bottle as an additional packaging configuration for shipment of certain Class A explosives. (Modes 1, 2.)
3569–X	DOT–E 3569	Western Atlas International Inc., Houston, TX.	49 CFR 173.246, 172.101 Column 4, 175.3.	To authorize use of non-DOT specification nonrefillable cylinders, for transportation of a liquid oxidizer. (Modes 1, 2, 3, 4.)
4262–X	DOT–E 4262	Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Mode 1.)
4354–X	DOT–E 4354	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4354–X	DOT–E 4354	Vanchem, Inc., Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4354–X	DOT–E 4354	PPG Industries, Incorporated, Pittsburgh, PA.	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4453–p	DOT–E 4453	Explo, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453–P	DOT–E 4453	Ren-Loi, Inc., Cuddy, PA	49 CFR 172.101, 173.114(a)(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453–P	DOT–E 4453	Blasting Products, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453–P	DOT–E 4453	H.L. & A.G. Balsinger, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453–P	DOT–E 4453	Mountaineer Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-P	DOT-E 4453	W.A. Murphy, Inc., El Monte, CA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4612-X	DOT-E 4612	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.)
4661-X	DOT-E 4661	Foote Mineral Company, Malvern, PA.	49 CFR 173.34(e)(1)	To authorize transport of butyl lithium in petroleum solvent in DOT Specification 4BA240 cylinders with alternative retest procedures. (Modes 1, 2, 3.)
4850-P	DOT-E 4850	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(cc), 175.3	To become a party to exemption 4850. (Modes 1, 2, 4.)
4850-P	DOT-E 4850	Drilling Measurements Inc. (DMI), Broussard, LA.	49 CFR 173.100(cc), 175.3	To become a party to exemption 4850. (Modes 1, 2, 4.)
4932-X	DOT-E 4932	Federal Laboratories, Inc., Saltsburg, PA.	49 CFR 172.101, 173.385(a), 175.3	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends overpacked in DOT Specification 12B fiberboard box. (Modes 1, 2, 4.)
5112-X	DOT-E 5112	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5112-X	DOT-E 5112	Austin Powder Company, Cleveland, OH.	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5704-X	DOT-E 5704	Aerojet Solid Propulsion Company, Sacramento, CA.	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Midwest, Inc., Chicago, IL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The West, San Ramon, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Mid-Atlantic, Inc., Moorestown, NJ.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Unigas Inc., Mercedita, PR	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 100A500W multi-unit tank cars. (Modes 1, 2, 3.)
5945-X	DOT-E 5945	Cardox Division of Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.315, 178.245	To authorize use of a small capacity DOT Specification 51 insulated portable tank, for shipment of a nonflammable compressed gas. (Mode 1.)
5951-X	DOT-E 5951	Van Waters & Rogers, Inc., Spartanburg, SC.	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A500 type tank. (Modes 1, 2.)
5951-X	DOT-E 5951	DPC Industries, Inc., Houston, TX	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A500 type tank. (Modes 1, 2.)
6016-X	DOT-E 6016	Huber Supply Company, Inc., Mason City, IA.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6016-P	DOT-E 6016	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.315(a)	To become a party to exemption 6016. (Mode 1.)
6250-X	DOT-E 6250	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 173.101, 173.102, 173.69, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To authorize shipment of partially dis-assembled aircraft with explosive components (ejection seat and canopy related devices) remaining installed. (Modes 1, 3.)
6250-X	DOT-E 6250	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.69, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To authorize shipment of partially dis-assembled aircraft with explosive components (ejection seat and canopy related devices) remaining installed. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6293-X	DOT-E 6293	Hercules Incorporated, Wilmington, DE.	49 CFR 173.21(b), 173.248	To authorize the increase of nitric acid from 13% to 16% contained in spent mixed acid for shipment in cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Atlas Powder Company, Dallas, TX.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MD-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6484-X	DOT-E 6484	Angus Chemical Company, Northbrook, IL.	49 CFR 172.101, 173.149a	To authorize shipment of the following additional materials classed as flammable liquids; nitromethane, 31%; and 1-nitroethane, 31%; and 1-nitropropane, 38% for shipment in cargo tanks. (Mode 1.)
6517-X	DOT-E 6517	Coyne Cylinder Company, Huntsville, AL.	49 CFR 173.303(a)	To authorize use of non-DOT specification steel cylinders comparable to DOT Specification 4BW for shipment of acetylene. (Modes 1, 2, 3.)
6530-X	DOT-E 6530	AGL Welding Supply Company, Inc., Clifton, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	National Welders, Charlotte, NC	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1,2.)
6530-X	DOT-E 6530	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Liquid Carbonic Industrial/Medical Corporation, Chicago, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen wtih helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of The West, Oakland, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	SOS Gases, Inc., Kearny, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Scott Specialty Gases, Plumsteadville, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6583-X	DOT-E 6583	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.249(a)(7)	To authorize shipment of a corrosive material in a DOT Specification 51 portable tank. (Mode 1.)
6614-X	DOT-E 6614	Steelcrete Company, Novi, MI	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6651-X	DOT-E 6651	Enthone, Incorporated, West Haven, CT.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1.)
6651-X	DOT-E 6651	Park Chemical Company, Detroit, MI.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers for transportation of certain Class B poisonous solids. (Mode 1.)
6657-X	DOT-E 6657	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA having an age over 35 years for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, 5.)
6670-X	DOT-E 6670	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.301(d), 173.302	To authorize the addition of Hexafluorroethane (R116) classed as a non-flammable gas as an additional commodity. (Mode 1.)
6672-X	DOT-E 6672	Chandler Evans, Inc., West Hartford, CT	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of welded or seamless, nonrefillable non-DOT specification steel cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
6759-X	DOT-E 6759	Atlas Powder Company, Dallas, TX	49 CFR 173.87, 177.835(g)(2)	To authorize transport of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6765-X	DOT-E 6765	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Linde Gases of The South, Inc., Houston, TX.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Iwatani International Corporation of America, Fort Lee, NJ.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Linde Gases of southern California, Inc., Santa Ana, CA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6769-X	DOT-E 6769	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314, 173.315	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2.)
6800-X	DOT-E 6800	Sonoco Plastic Drum, Inc., Lockport, IL.	49 CFR 173.266	To authorize manufacture, marking and sale of non-DOT specification 30- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6816-X	DOT-E 6816	General Dynamics, San Diego, CA	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6861-X	DOT-E 6861	Teledyne Mccormick Selph, Hollister, CA.	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)
6874-P	DOT-E 6874	Goldstone Supply Corp., Sparks, NV.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6874-P	DOT-E 6874	Sino Pacific Trading co., Brisbane, Queen's Land, Australia.	49 CFR 172.101, 173.370(a)(13)	To become a party of exemptioj 6874. (Modes 1, 2, 3.)
6874-P	DOT-E 6874	Nevada Chemicals, Incorporation, Salt Lake City, UT.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6874-P	DOT-E 6874	Mining Services International (MSI) Salt Lake City, UT.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6902-X	DOT-E 6902	Halocarbon Products Corporation, North Augusta, SC.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6902-X	DOT-E 6902	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6971-P	DOT-E 6971	Ultra Scientific, Inc., North Kingstown, RI.	49 CFR Parts 100-199	To become a party to exemption 6971. (Modes 1, 2, 3, 4, 5.)
6974-X	DOT-E 6974	Tavco, Inc., Chatsworth, CA	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7035-X	DOT-E 7035	Owens-Illinois Plastic Products Inc., Toledo, OH.	49 CFR 173.119, 173.128(a), 173.245(a)(26), 173.245b(a)(6), 173.249(a)(1), 173.250a(a)(1), 173.256, 173.257(a)(1), 173.263(a)(28), 173.265(d)(6),173.266(b)(8), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6), 173,287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.346, 173.348, 178.19.	To authorize manufacture, marking and sale of non-DOT specification reusable, molded polyethylene containers, for transportation of corrosive liquids and solids, oxidizers, flammable liquids, and Class B poisonous liquids. (Modes 1, 2, 3.)
7052-X	DOT-E 7052	Pointer, Inc., Tempe, AZ	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Dukane Corporation/Seacom Division, St. Charles, IL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	VMS Consulting Engineer, Woodmere, NY.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Environmental Pacific Corporation, Lake Oswego, OR.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Northrop Electronics System Division, Hawthorne, CA.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	NASA (National Aeronautics & Space Administration), Washington, DC.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Duracell Inc., Bethel, CT	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	LO-KATA Communication Electronics, Cornwall, England.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Hoppecke Battery Systems, Inc., Butler, NJ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Jet Propulsion Laboratory, Pasadena, CA.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	FDK America, Inc., Englewood Cliffs, NJ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Fuji Electronchemical Co., Ltd., Tokyo, Japan.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Multiplier Industries Corp., Mt. Kisco, NY.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052-P	DOT-E 7052	Unitech Industries Inc., Scottsdale, AZ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7072-X	DOT-E 7072	Container Corporation of American, Wilmington, DC.	49 CFR 173, Subparts D, E, F	To renew and to authorize an increase in drum capacity not to exceed 55 gallon capacity for shipment of certain corrosive and poision B liquids, (Modes 1, 2, 3.)
7087-X	DOT-E 7087	3M/Transportation Department, St. Paul, MN.	49 CFR 173.286(b), 175.3	To authorize shipment of small quantities of certain hazardous materials in non-DOT specification glass, polyethylene or other plastic containers. (Modes 1, 2, 3, 4, 5.)
7205-X	DOT-E 7205	U.S. Department of Defense, Falls Church, VA.	49 CFR 46 CFR 146.29-99	To authorize use of a non-DOT specification cargo tank, for transportation of a flammable gas and a nonflammable gas. (Mode 3.)
7280-X	DOT-E 7280	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.905(c), 176.905(d)	To authorize fuel tanks to be ¾ full instead of ¼ full and vehicles to be transported with battery cables connected if the holds or compartments of a vessel in which vehicles are loaded are mechanically ventilated. (Mode 3.)
7517-X	DOT-E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize manufacture, marking and sale of non-DOT specification fusion welded tank car tanks, for transportation of nonflammable compressed gases. (Modes 1, 2, 3.)
7536-X	DOT-E 7536	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29-41	To authorize an increase in the maximum allowable draft weights for five and ten ton rated booms, for shipment of military explosives. (Mode 3.)
7542-X	DOT-E 7542	Coyne Cylinder Company, Huntsville, AL.	49 CFR 173.303(a)	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, for transportation of certain flammable gases. (Modes 1, 2.)
7549-X	DOT-E 7549	ICI Americas Inc., Wilmington, DE	49 CFR 173.245a(a), 173.3a, 174.63(b), 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51, for shipment of a certain corrosive material. (Modes 1, 2, 3.)
7607-X	DOT-E 7607	Hanson Engineers, Incorporation, Springfield, IL.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607-P	DOT-E 7607	Groundwater Technology, Inc., Concord, CA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7607-X	DOT-E 7607	The Foxboro Company, South Norwalk, CT.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607-X	DOT-E 7607	I.T. Corporation (International Technology Corp.), Torrance, CA.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607-P	DOT-E 7607	Metcalf & Eddy, Inc., Santa Clara, CA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-p	DOT-E 7607	Advanced Sciences, Inc., Englewood, CO.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	U.S. Environmental Protection Agency, Seattle, WA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7616-P	DOT-E 7616	Denver & Rio Grande Western Railroad Company, Denver, CO.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7638-X	DOT-E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize an additional model of the exempted cylinder. (Modes 1, 2, 3, 4.)
7648-P	DOT-E 7648	Sunwest Aviation, Ogden, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(i), 175.3, 175.35(a).	To become a party to exemption 7648. (Mode 4.)
7654-X	DOT-E 7654	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7694-X	DOT-E 7694	BW/IP International, Inc., Van Nuys, CA.	49 CFR 173.302(a)(4), 175.3	To autorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7694-X	DOT-E 7694	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7753-X	DOT-E 7753	FMC Corporation, Philadelphia, PA	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7753-X	DOT-E 7753	Stauffer Chemical Company, Shelton, CT.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7774-P	DOT-E 7774	Penwood Wireline, Inc., Houston, TX.	49 CFR 173.246, 175.3	To become a party to exemption 7774. (Modes 1, 2, 4.)
7835-X	DOT-E 7835	Messer Grieshem Industries, Inc., Valley Forge, PA.	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835-X	DOT-E 7835	Sunox Incorporated, Charlotte, NC	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835-X	DOT-E 7835	Lincoln Big Three, Inc., Baton Rouge, LA.	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835-P	DOT-E 7835	Welders Supply Company (WESCO), Billerica, MA.	49 CFR 177.848, Part 107, Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7691-X	DOT-E 7891	Spectrum Chemical Manufacturing Corporation, Gardena, CA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.)
7907-X	DOT-E 7907	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.127, 173.184, 178.224	To authorize shipment of wet nitrocellulose, in non-DOT specification fiberboard drums. (Modes 1, 2, 3.)
7907-X	DOT-E 7907	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.127, 173.184, 178.224	To authorize shipment of wet nitrocellulose, in non-DOT specification fiberboard drums. (Modes 1, 2, 3.)
7915-X	DOT-E 7915	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.93(b)	To authorize transport of certain propellant explosives in water in DOT Specification MC-307 or MC-312 cargo tanks. (Mode 1.)
7943-X	DOT-E 7943	Chem Lab Products, Inc., Anaheim, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To modify location of top flap handholes in the corrugated fiber box similar to DOT Specification 12B. (Mode 1.)
7943-X	DOT-E 7943	Chem Lab Products, Inc., Ontario, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-P	DOT-E 7943	Freight Specialists/Div. of VANA Enterprises, Inc., La Verne, CA.	49 CFR 172.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7943-X	DOT-E 7943	GPS Industries, City of Industry, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7943-X	DOT-E 7943	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	Alstar Company, Tracy, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7991-X	DOT-E 7991	Burlington Northern Railroad Company, Overland Park, KS.	49 CFR, Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
7991-P	DOT-E 7991	Jackson Jordan, Inc., Ludington, MI	49 CFR, Parts 100-177	To become a party to exemption 7991. (Mode 1.)
8006-X	DOT-E 8006	Esquire Novelty Corporation, Amsterdam, NY.	49 CFR 172.400(a), 172.504 Table 2.	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1000 pounds or more. (Mode 1.)
8009-P	DOT-E 8009	Marlin Gas Transport, Inc., Palm Harbor, FL.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8091-X	DOT-E 8091	American Telephone and Telegraph Company, Greensboro, NC.	49 CFR Parts 100-177	To authorize transport of certain mercury relays exempted from 49 CFR 100-177, in heat sealed glass vials, (Modes 4, 5.)
8156-P	DOT-E 8156	National Specialty Gases, Durham, NC.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-X	DOT-E 8156	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8167-X	DOT-E 8167	Manostat Corporation, New York, NY.	49 CFR 173.287, 175.3	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystyrene/glass bottle inside packaging. (Modes 1, 2, 3, 4.)
8175-X	DOT-E 8175	The Norac Company, Inc., Azusa, CA.	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benozoyl peroxide, wet, in a plastic lined DOT Specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
8180-X	DOT-E 8180	Dow Corning Corporation, Midland, MI.	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To authorize use of non-DOT specification steel drums for shipment of a corrosive material and a flammable liquid. (Modes 1, 2.)
8208-X	DOT-E 8208	Jet Propulsion Laboratory, Pasadena, CA.	49 CFR 173.145, 173.276, 173.336	To authorize shipment of liquid propellant samples, frozen, in non-DOT specification plywood boxes. (Mode 1.)
8209-X	DOT-E 8209	Coastal Planes Airways, Incorporated, Warner Robins, GA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To provide for a new design bulk shipping container to hold up to 112 modules, classed as flammable solids. (Modes 1, 2, 3, 4.)
8214-P	DOT-E 8214	Mazda Motor of America, Inc., Irvine, CA.	49 CFR 173.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (Modes 1, 2, 3, 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize the addition of a new bulk pack for automobile module assemblies classed as flammable solids. (Modes 1, 2, 3, 4.)
8214-P	DOT-E 8214	Mitsubishi Motor Sales of America, Inc., Cypress, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, 4.)
8215-X	DOT-E 8215	Olin Corporation/Winchester Group, East Alton, IL.	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To renew and authorize a plastic bucket of approximately 4 gallons capacity with a lid to be used for the shipment of certain Class A, B and C explosive materials. (Modes 1, 2.)
8215-X	DOT-E 8215	Olin Corporation/Winchester Group, East Alton, IL.	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To renew authorize shipment of scrap smokeless powder, wet with 30% water, classed as flammable solid instead of scrap propellant explosive, Class B explosive. (Modes 1, 2.)
8230-X	DOT-E 8230	Fisher Scientific Company, Fair Lawn, NJ.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8230-X	DOT-E 8230	Seastar Chemicals Inc., Sidney, British Columbia, CN.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8244-X	DOT-E 8244	Vann Systems, A Division of Halliburton Company, Houston, TX.	49 CFR 173.119, 173.245, 173.263, 173.264, 173.289, 46 CFR 64.9.	To authorize use of a DOT Specification marine portable tank, for shipment of certain flammable liquids, corrosive materials and combustible liquids. Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8244-X	DOT-E 8244	Halliburton Services, Duncan, OK	49 CFR 173.119, 173.245, 173.263, 173.264, 173.289, 49 CFR 64.9.	To authorize use of a DOT Specification marine portable tank, for shipment of certain flammable liquids, corrosive materials and combustible liquids. (Modes 1, 3.)
8248-X	DOT-E 8248	AT&T Technologies, Inc., Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 179.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15 C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248-X	DOT-E 8248	American Telephone and Telegraph Company, Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8264-X	DOT-E 8264	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1, 2.)
8265-X	DOT-E 8265	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.197a, 173.93, 177.838(g).	To authorize shipment of certain solid propellant explosives and smokeless powders for small arms in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms in DOT-21C fiber drums packed in fiberboard boxes. (Modes 1, 2.)
8269-X	DOT-E 8269	Fort Worth Fabrication, Inc., Fort Worth, TX.	49 CFR 173.119(a), 172.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To reissue for transporting or offering liquid and semi-solid waste materials in non-DOT specification cargo tanks. (Mode 1.)
8278-X	DOT-E 8278	Maintenance Mechanical Corporation, Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for shipment of flammable gases and flammable liquids. (Mode 1.)
8287-X	DOT-E 8287	Rohm and Haas Company, Philadelphia, PA.	49 CFR 173.245(a)(16), 173.245(a)(26), 178.19-4(c), 178.35a-2(b).	To authorize shipmetn of a corrosive liquid in a DOT Specification 6D/2SL composite container or DOT Specification 34 drum equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polyethylene bottles with vented closures. (Modes 1, 2, 3.)
8307-X	DOT-E 8307	U.S. Department of Energy, Washington, DC.	49 CFR 173.21, 173.247, 173.25(b), 175.3.	To authorize shipment of non-pyrotechnic smoke generators containing titanium tetrachloride, ammonium hydroxide, an explosive valve and nitrogen. (Modes 1, 2, 3, 4.)
8307-X	DOT-E 8307	U.S. Department of Defense, Falls Church, VA.	49 CFR 713.21, 173.247, 173.25(b), 175.3.	To authorize shipment of non-pyrotechnic smoke generators containing titanium tetrachloride, ammonium hydroxide, an explosive valve and nitrogen. (Modes 1, 2, 3, 4.)
8354-X	DOT-E 8354	Compagnie Des Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315	To authorize use of non-DOT specification portable tanks, for transportation of certain liquefied petroleum gases and other gases classed as flammable gases and flammable liquid. (Modes 1, 2, 3.)
8377-X	DOT-E 8377	Teledyne McCormick Selph, Hollister, CA.	49 CFR 172.101, 173.113, 175.3	To authorize transport of devices described as detonating fuzes, Class C explosives, in non-DOT specification fiberboard boxes packed in non-DOT specification strong wooden boxes. (Modes 1, 4.)
8386-X	DOT-E 8386	J.J. Mauget Company, Los Angeles, CA.	49 CFR 172.101, 172.400	To authorize transport of a Class B poison in special pressure sealed polyethylene capsules without the POISON label. (Modes 1, 2.)
8390-X	DOT-E 8390	Mallinckrodt, Inc., Paris, KY	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-998% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8396-X	DOT-E 8396	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.119, 173.21, 173.221	To authorize transport of certain organic peroxide solutions in DOT Specification MC-307 and MC-312 cargo tanks. (Mode 1.)
8426-P	DOT-E 8426	Power Master, Inc. (PMI), Fontana, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Ancon Environmental Services, Wilmington, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8445-X	DOT-E 8445	University of Minnesota, Minneapolis, MN.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Merrell Dow Pharmaceuticals, Cincinnati, OH.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8445-X	DOT-E 8445	S&W Waste, Inc., South Kearny, NJ.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Rhone-Poulenc AG Company, Research Triangle Park, NC.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Monsanto Chemical Company, St. Louis, MO.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	U.S. Department of Defense, Falls Church, VA.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Dow Corning Corporation, Midland, MI.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-X	DOT-E 8445	The Dow Chemical Company, Midland, MI.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	McDonnell Aircraft Company, St. Louis, MO.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	DowBrands, Indianapolis, IN	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Heritage Transport, Inc., Indianapolis, IN.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-X	DOT-E 8445	Waste Conversion, Inc., Hatfield, PA.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	E&K Hazardous Waste Services, Inc., Sheboygan, WI.	49 CFR 173, Subparts D, E, F, H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Merrell Dow Research Indianapolis, IN.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8451-X	DOT-E 8451	Martin Electronics, Inc., Perry, FL	49 CFR 173.65, 173.86(e), 175.3	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of flammable liquids and flammable gases. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Trojan Corporation, Spanish Fork, UT.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8451-P	DOT-E 8451	United Technologies Corporation, San Jose, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Talley Defense Systems, Inc., Mesa, AZ.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Martin Electronics, Inc., Perry, FL	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	U.S. Department of the Interior, Pittsburgh, PA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453-X	DOT-E 8453	Austin Powder Company, Cleveland, OH.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453-X	DOT-E 8453	Atlas Powder Company, Dallas, TX	49 CFR 173.114	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453-X	DOT-E 8453	Pacco Inc., So. Olympia, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453-X	DOT-E 8453	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8518-P	DOT-E 8518	Parris Vaccum Service, Inc., Bakersfield, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-P	DOT-E 8518	Cummings Vacuum Service Inc., Shafter, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-X	DOT-E 8518	Barnett Trucking, Inc., Fillmore, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-P	DOT-E 8518	Ancon Environmental Services, Wilmington, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-X	DOT-E 8518	Universal Engineering Incorporated, Concord, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518-P	DOT-E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-P	DOT-E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8519-X	DOT-E 8519	Polish Ocean Lines, Gdynia, Poland.	49 CFR 176.905(L)	To authorize stowage of motor vehicles with their fuel tanks containing gasoline, classed as a flammable liquid, in the same cargo compartment with other hazardous materials on specifically equipped roll-on/roll-off cargo vessels. (Mode 3.)
8519-X	DOT-E 8519	Lykes Brothers Steamship Company, Inc., New Orleans, LA.	49 CFR 176.905(L)	To become a party to exemption 8519. (Mode 3.)
8554-P	DOT-E 8554	Dole Explosives, Inc., Rosemount, MN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554. (Modes 1, 3.)
8554-X	DOT-E 8554	Thermex Energy Corporation, Dallas, TX.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	W.A. Murphy, Inc., El Monte, CA	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8556-X	DOT-E 8556	Linde Gases of the South, Inc., Houston, TX.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556-X	DOT-E 8556	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556-X	DOT-E 8556	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556-X	DOT-E 8556	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8569-X	DOT-E 8569	Allied-Signal Aerospace	49 CFR 172.101 Column 6(b), 173.276, 175.3.	To authorize carriage of class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Modes 1, 3, 4.)
8579-X	DOT-E 8579	Nitram, Inc., Tampa, FL	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8602-X	DOT-E 8602	Minnesotal Valley Engineering, Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8645-X	DOT-E 8645	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commerically designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature. (Mode 1.)
8650-X	DOT-E 8650	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354, 174.63(b)	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound. (Modes 1, 2, 3.)
8693-X	DOT-E 8693	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.230	To authorize shipment of sodium metal dispersion in organic solvent in DOT Specification 4BW cylinders. (Modes 1, 3.)
8698-X	DOT-E 8698	Taylor-Wharton, Inc., Theodore, AL.	49 CFR 173.320, 176.76	To authorize manufacture, marking and sale of vacuum insulated, non-DOT specification portable tanks, for transportation of liquid nitrogen. (Mode 3.)
8706-X	DOT-E 8706	Prairie State Equipment, Inc., Sioux Falls, SD.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of a full opening rear door feature on the non-DOT specification cargo tanks used for the shipment of liquid and semi-solid. (Mode 1.)
8708-X	DOT-E 8708	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357(b)(2)	To authorize use of non-DOT specification steel drums (overpacked, palletized and containerized), for shipment of a Class B poison. (Modes 1, 3.)
8718-P	DOT-E 8718	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a), 173.304(a), 175.3.	To become a party to exemption 8718. (Modes 1, 2, 3, 4, 5.)
8720-X	DOT-E 8720	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure non-refillable cylinders, for shipment of nonflammable and nonliquefied gases. (Modes 1, 2, 4.)
8723-X	DOT-E 8723	Atlas Powder Company, Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize oxidizers as additional commodities for shipment under DOT-E 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	SherDeb Corporation, Lehigh Valley, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-X	DOT-E 8723	Cherokee Explosives, Inc., Plainville, CT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Dyna-Blast, Nortonville, KY	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Econex Incorporated, Wheaton, IL	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Explo, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	H.L. & A.G. Balsinger, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Mountaineer Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Ren-Loi, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Blasting Products, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8732-X	DOT-E 8732	Chemcentral, Inc. Chicago, IL	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732-X	DOT-E 8732	The Dow Chemical Company, Midland, MI.	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8735-X	DOT-E 8735	Letica Corporation, Rochester, MI	49 CFR 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of non-DOT specification removable head molded polyethylene drums, for transportation of corrosive liquids and flammable liquids. (Modes 1, 2, 3.)
8750-X	DOT-E 8750	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification girth welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4.)
8772-X	DOT-E 8772	Akzo Chemicals Inc., Chicago, IL	49 CFR 172.101, Column 6(b)	To authorize an increase in the net quantity limitation, not exceeding five gallons per package, for shipment of certain corrosive liquids and flammable liquids that are corrosive, when shipped via cargo-only aircraft. (Mode 4.)
8779-X	DOT-E 8779	Acme Resin Corporation, Westchester, IL.	49 CFR 173.349	To authorize use of DOT Specification 57 portable tanks for shipment of poison B liquids. (Mode 1.)
8811-P	DOT-E 8811	Hercules Incorporated, Wilmington, DE.	49 CFR 173.294, 178.340-3, 178.343-2.	To become a party to exemption 8811. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8811-P	DOT-E 8811	Aqualon Company, Wilmington, DE	49 CFR 173.294, 178.340-3, 178.343-2.	To become a party to exemption 8811. (Mode 1.)
8837-X	DOT-E 8837	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.245(a)(38), 173.256(b)(1), 173.263(a)(8), 173.277(c).	To authorize manufacture, marking and sale of non-DOT specification steel jacketed polyethylene tanks, for transportation of certain corrosive liquids. (Modes 1, 2, 3.)
8839-X	DOT-E 8839	Poly Processing Company, Inc., Monroe, LA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize an additional closure system for the non-DOT Specification portable tank. (Modes 1, 2, 3,)
8839-X	DOT-E 8839	Poly Processing Company, Monroe, LA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize use of a metal frame to contain polyethylene portable tanks for shipment of certain corrosive liquids, flammable liquids and an oxidizer. (Modes 1, 2, 3.)
8845-P	DOT-E 8845	Drilling Measurements Inc., (DMI), Broussard, LA.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845. (Modes 1, 3.)
8859-P	DOT-E 8859	Eastman Kodak Company, Rochester, NY.	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To become a party to exemption 8859. (Modes 1, 4, 5.)
8862-P	DOT-E 8862	ARC Chemical Division, Balchem Corporation, Slate Hill, NY.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8888-X	DOT-E 8888	Nalco Chemical Company, Naperville, IL.	49 CFR 172.101 Column 6(b), 173.119, 173.245(a)(17), 175.30.	To authorize shipment of compound cleaning, liquid, in drums having a capacity exceeding the net quantity limitations for cargo only aircraft. (Mode 4.)
8901-X	DOT-E 8901	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
8931-P	DOT-E 8931	Marsulex, Inc., North York, Ontario, Canda.	49 CFR 173.272, 179.201-1	To become a party to exemption 8931. (Mode 2.)
8938-X	DOT-E 8938	Cryogenic Services, Inc., Canton, GA.	49 CFR 173.304(a), 175.3	To authorize the addition of a welded cylinder (CSI PLC-450-HP) for use in liquefied carbon dioxide service. (Modes 1, 2, 3, 4.)
8944-X	DOT-E 8944	Union Carbide Corporation, Danbury, CT.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To renew and to modify certain procedures for acoustic emission testing of DOT Specification 3AX, 3AAX and 3T cylinders. (Modes 1, 3.)
8986-X	DOT-E 8986	Cook Slurry Company, Salt Lake City, UT.	49 CFR 173.114a(b)(3)	To authorize transport of slurry blasting agent, in DOT Specification MC-307 cargo tanks constructed of 304 stainless steel. (Mode 1).
8988-X	DOT-E 8988	Dresser Industries, Inc./Guiberson Division, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8988-P	DOT-E 8988	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988. (Modes 1, 3, 4.)
8988-P	DOT-E 8988	Drilling Measurements, Inc. (DMI), Broussard, LA.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988. (Modes 1, 3, 4.)
8988-X	DOT-E 8988	Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8988-X	DOT-E 8988	Vann Systems, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
9016-X	DOT-E 9016	Van Leer Verpackungen GmbH, Koln, West Germany.	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 110 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9023-X	DOT-E 9023	Chemical Industries of Northern Greece (SICNG), Thessaloniki, Greece.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of liquefied compressed gases. (Modes 1, 2, 3.)
9047-X	DOT-E 9047	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of the West, San Ramon, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9047-X	DOT-E 9047	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	GenEx, Ltd., Des Moines, IA	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of the Midwest, Inc., Chicago, IL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047-X	DOT-E 9047	UNIGAS, Ind., Mercedita, PR	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9048-X	DOT-E 9048	Brooks Instrument Div./Emerson Electric Co., Statesboro, GA.	49 CFR 173.119, 173.304, 173.315	To renew and to authorize flow tubes on mechanical displacement meters to be manufactured with Type 304 and 17-4 PH stainless steel used for shipping flammable liquid or gas, n.o.s. (Mode 1.)
9066-P	DOT-E 9066	Rolls-Royce Motor Cars Inc., Lyndhurst, NJ.	49 CFR 171.11 (see paragraph 8.d.).	To become a party to exemption 9066. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Volkswagen of America, Inc., Troy, MI.	49 CFR 171.11 (see paragraph 8.d.).	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (Modes 1, 2, 3, 4.)
9067-X	DOT-E 9067	Watco Truck Rigging, Inc., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
9082-X	DOT-E 9082	Rhone-Poulenc Ag Company Research Triangle Park, NC.	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 3.)
9101-X	DOT-E 9101	General Electric Company, Princeton, NJ.	49 CFR 172.101 Column 6(b), 173.92, 175.30.	To authorize party status, an additional Rocket motor, Class B explosive, and an additional shipping container. (Mode 4.)
9108-P	DOT-E 9108	SNPE Inc., Princeton, NJ	49 CFR 173.77	To become a party to exemption 9108. (Modes 1, 3.)
9110-P	DOT-E 9110	General Plastics and Chemicals Co., Natick, MA.	49 CFR 173.163	To become a party to exemption 9110. (Modes 1, 2, 3.)
9114-X	DOT-E 9114	AT&T Technologies, Inc., Lee's Summit, MO.	49 CFR 172.203(d)(1)(ii), 172.203(d)(1)(iii), 172.403(b), 172.403(g)(2), 173.415(a).	To authorize AT&T Technologies to provided packaging to be used for highway transport to the Kansas City Works of electron tubes containing small amounts of radioactive material (85Kr and 226Ra) without specific determination of total activity or Transport Index for the package. (Mode 1.)
9116-X	DOT-E 9116	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 178.19, 178.253, Part 173, Subpart F.	To authorize use of new Paxon 7004 polyethylene resin ad to reduce the minimum wall thickness from 0.375 to 0.230 for tanks built. (Modes 1, 2, 3.)
9116-X	DOT-E 9116	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9130-X	DOT-E 9130	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9130-X	DOT-E 9130	Hydrotech Chemical Corporation, Marietta, GA.	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9130-X	DOT-E 9130	Olin Chemicals, Stamford, CT	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9130-X	DOT-E 9130	Bio-Lab, Incorporated, Decatur, GA	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9140-X	DOT-E 9140	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize an optional stainless steel bottom discharge fitting and valve assembly for a non-DOT specification polyethylene portable tank for shipment of certain corrosive flammable or oxidizer liquid. (Modes 1, 2, 3.)
9144-X	DOT-E 9144	Cajun Bag & Supply Co., Crowley, LA.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To renew and to authorize cargo vessel as additional mode of transportation. (Modes 1, 2, 3.)
9149-X	DOT-E 9149	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354, 174.63(b), 178.245.	To authorize use of non-DOT specification IMO Type 1 portable tanks, for transportation of motor fuel antiknock compound. (Modes 1, 2, 3.)
9150-X	DOT-E 9150	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 178.340, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks with bottom outlet, for shipment of corrosive and flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9162-X	DOT-E 9162	Sun Pipe Line Company, Longview, TX.	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for transportation of flammable liquids or flammable gases. (Mode 1.)
9164-X	DOT-E 9164	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.119(b)(6)	To authorize the addition of other specific products and sludges such as lube oil sludges, anti-freeze sludge, cutting oil sludge, lubricating oils, greases and inks, for shipment in cargo tanks. (Modes 1, 2.)
9164-X	DOT-E 9164	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.119(b)(6)	To authorize manufacture, marking and sale of a non-DOT specification steel portable tank of 345 gallon capacity, with removable head, for shipment of waste paint and waste paint sludge. (Modes 1, 2.)
9169-X	DOT-E 9169	PASCO Zinc Corporation (formerly Pacific Smelting), Torrance, CA.	49 CFR 173.154	To authorize transport of a water reactive material in vented freight shipping containers. (Modes 1, 3.)
9174-X	DOT-E 9174	McDonnell Aircraft Company, St. Louis, MO.	49 CFR 173.302(a)	To authorize use of non-DOT specification cylindrical and spherical pressure vessels which are an integral part of the Space Shuttle Auxiliary Propulsion System rods, for transportation of helium and nitrogen. (Mode 1.)
9181-X	DOT-E 9181	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9181-X	DOT-E 9181	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9181-X	DOT-E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9198-P	DOT-E 9198	USDA—U.S. Department of Agriculture/Forest Serv., Washington, DC.	49 CFR 175.5(a)(2)	To become a party to exemption 9198. (Mode 4.)
9198-X	DOT-E 9198	USDA—U.S. Department of Agriculture/Forest Serv., Washington, DC.	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9198-X	DOT-E 9198	U.S. Department of the Interior (DOI), Boise, ID.	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9222-P	DOT-E 9222	Terra First, Inc., Vernon, AL	49 CFR 173.154	To become a party to exemption 9222. (Mode 1.)
9256-X	DOT-E 9256	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.86, 175.30, 46 CFR 146.20-13, Part 107, Appendix B, Subpart B(1).	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 3, 4.)
9262-P	DOT-E 9262	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9262. (Modes 1, 3, 4.)
9262-P	DOT-E 9262	Drilling Measurements, Inc. (DMI), Broussard, LA.	49 CFR 173.100(v), 175.30	To become a party to exemption 9262. (Modes 1, 3, 4.)
9269-X	DOT-E 9269	Columbia Nitrogen Corporation, Augusta, GA.	49 CFR 173.154(a)(17)	To authorize shipment of ammonium nitrate solution, containing not less than 15% water, in DOT Specification 103DW tank car tanks. (Mode 2.)
9271-P	DOT-E 9271	The Atchison, Topeka & Santa Fe Railway Company, Chicago, IL.	49 CFR 174.90	To become a party to exemption 9271. (Mode 2.)
9312-X	DOT-E 9312	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR, Parts 170-179	To authorize shipment of Space Shuttle Orbiters which contain small quantities of explosives, flammable liquids and poisons, and nonflammable gases in non-DOT specification pressure vessels. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9316-X	DOT-E 9316	Fluoroware Inc., Chaska, MN	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35a, Part 173, Subpart F.	To authorize the addition of 72% Perchloric acid classed as an oxidizer and/or corrosive. (Modes 1, 2, 3.)
9330-X	DOT-E 9330	MarkAir, Inc., Anchorage, AK	49 CFR 172.101, Column 6(b), 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,000 to 2,200 gallon capacity, for transportation of nitrogen refrigerated liquid. (Mode 4.)
9331-P	DOT-E 9331	Albright & Wilson Americas, Toronto, Ont., Canada Toronto, Ont., Canada.	49 CFR 173.263(a)(10)	To become a party to exemption 9331. (Mode 1.)
9332-P	DOT-E 9332	Chromalloy R & T Division, Orangeburg, NY.	49 CFR 172.101, 173.150, 175.3	To become a party to exemption 9332. (Modes 1, 2, 4.)
9346-X	DOT-E 9345	Penrzoil Company, Houston, TX	49 CFR 174.67(a)(2)	To modity exemption to authorize seventeen (17) coupled tank cars instead of twelve (12) tank cars, for shipment of oil, n.o.s. (Mode 2.)
9346-X	DOT-E 9346	Witco Corporation, Bradford, PA	49 CFR 174.67(a)(2)	To authorize setting of the brakes and blocking the wheels of the first and last tank cars on up to a twelve tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum. (Mode 2.)
9355-X	DOT-E 9355	Eastman Kodak Company, Rochester, NY.	49 CFR, Parts 100–177	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Modes 1, 2, 3, 4, 5.)
9363-X	DOT-E 9363	Columbia Astrophysics Laboratory, New York, NY.	49 CFR 173.302(a)(1)	To authorize use of non-DOT specification cylinders manufactured from monel to DOT Specification 3A with certain exceptions, for transportation of certain flammable and nonflammable gases. (Mode 1.)
9367-X	DOT-E 9367	Stone Container Corporation, Schaumburg, IL.	49 CFR 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large non-DOT specification collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.)
9388-X	DOT-E 9388	Gulf Central Storage & Terminal Company, Tulsa, OK.	49 CFR 173.314(e)	To become a party to exemption 9388. (Mode 2.)
9393-X	DOT-E 9393	Sexton Can Company, Inc., Cambridge, MA.	49 CFR 173.304(a), 178.65	To authorize rail and cargo vessels as additional modes of transportation. (Modes 1, 2, 3.)
9400-X	DOT-E 9400	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 176.19, 176.253, Part 173, Subpart F.	To authorize an additional closure system for the non-DOT specification portable tank. (Modes 1, 2, 3.)
9402-X	DOT-E 9402	NACCO, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9416-X	DOT-E 9416	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transportation. (Modes 1, 2, 3.)
9416-X	DOT-E 9416	CIBA-GEIGY Corporation, Ardsley, NY.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transporation. (Modes 1, 2, 3.)
9419-X	DOT-E 9419	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc. Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To authorize use of a limited quantity of DOT Specification 3AAX or 3T cylinders that are retested by means other than the hyrostatic retest required in 49 CFR 173.34(e). (Modes 1, 3.)
9419-X	DOT-E 9419	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To authorize use of a limited quantity of DOT Specification 3AAX or 3T cylinders that are retested by means other than the hyrostatic retest required in 49 CFR 173.34(e). (Modes 1, 3.)
9421-X	DOT-E 9421	Taylor-Wharton, Division of Harsco Corporation, Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of a non-DOT specification steel cylinder complying in part with DOT 3AA specification, for transportation of certain flammable and nonflammalbe gases. (Modes 1, 2, 3, 4.)
9436-X	DOT-E 9436	Union Carbided Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize manufacture, marking and sale of non-DOT specification portable tanks for transportation of nonflammable refrigerated liquids. (Modes 1, 3.)
9449-X	DOT-E 9449	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	49 CFR 172.101, 173.21, 173.315(i)(3), 173.346, 173.3a, 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT specification 51 portable tank for shipment of carbamate pesticide, liquid, toxic, n.o.s. (Modes 1, 3.)
9456-X	DOT-E 9456	General Electric Company, Waterford, NY.	49 CFR 173.245, 173.280	To authorize use of DOT Specification MC-330 and MC-331 cargo tanks, for transportation of certain corrosive materials, (Mode 1.)
9456-X	DOT-E 9456	Dow Corning Corporation, Midland, MI.	49 CFR 173.245, 173.280	to authorize use of DOT Specification MC-330 and MC-331 cargo tanks, for transportation of certain corrosive materials. (Mode 1.)
9460-X	DOT-E 9460	Tracor Aerospace, Inc., East Camden, AR.	49 CFR 172.101	To authorize transportation of a Class A type 4 explosive in sealed velostat bag containing not more than one pound of powder or pellets, packed in DOT Specification 17C or 17H metal drums. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9462-X	DOT-E 9462	Aztec Metal Fabricating Co., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
9464-X	DOT-E 9464	Broco, Inc., Rialto, CA	49 CFR 173.100	To authorize transport of a pest control device which has dimensions exceeding those authorized in 49 CFR, in a fiberboard card and placed in a heat sealed plastic bag. (Modes 1, 2, 3, 4, 5.)
9466-X	DOT-E 9466	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	49 CFR 173.365(a)(6)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)
9478-X	DOT-E 9478	Systron Donner, Safety Systems Division, Concord, CA.	49 CFR 173.304, 175.3, 178.46	To authorize manufacture, marking and sale of non-DOT specification cylinders conforming with DOT Specification 3AL in shape and for certain tests for shipment of nonflammable gases. (Modes 1, 2, 4.)
9480-X	DOT-E 9480	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	Airco Special Gases, Riverton, NJ	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9481-X	DOT-E 9481	C-I-L, Inc., North York, Ontario, Canada.	49 CFR 173.77	To authorize transport of PETN wet with 25% water in plastic bags packed in fiberboard boxes instead of metal drums. (Mode 1.)
9485-X	DOT-E 9485	Kaw Valley, Inc., Leavenworth, KS	49 CFR 173.305	To authorize an increase in total vapor pressure for mixtures shipped under the exemption, from 140 psig at 130 degrees F to 286 psig at 130 degrees F. (Modes 1, 2, 3.)
9488-X	DOT-E 9488	Conference of Radiation Control Program Directors, Frankfort, KY.	49 CFR 173.415(a), 173.431	To authorize use of specially sealed DOT-2R containers in concrete filled steel drums (certified as DOT-7A) for one-time transport for disposal of not more than 500 millicuries of radium-226 in normal or special form without each shipper keeping a package test performance certification file. (Mode 1.)
9490-X	DOT-E 9490	National Refrigerants, Inc., Plymouth Meeting, PA.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9498-X	DOT-E 9498	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.365, 173.367, 173.370	To authorize shipment of Copper arsenide, classed as Poison B, in a non-DOT flexible intermediate bulk polypropylene bag. (Modes 1, 2, 3.)
9498-X	DOT-E 9498	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.365, 173.367, 173.370	To authorize shipment of Copper arsenide, classed as Poison B, in a non-DOT flexible intermediate bulk polypropylene bag. (Modes 1, 2, 3.)
9499-X	DOT-E 9499	Cleveland Container Corporation, Cleveland, OH.	49 CFR 178.19, Part 173, Subparts D, F.	To authorize manufacture, marking and sale of 3-½, 5, 5-½, and 6-gallon capacity DOT Specification 35 removable head polythylene drums, for shipment of corrosive and flammable liquids. (Modes 1, 2, 3.)
9505-X	DOT-E 9505	The Norac Company, Inc., Azusa, CA.	49 CFR 173.157	To authorize transport of wet benzoyl peroxide in polyethylene containers, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9506-X	DOT-E 9506	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.119(m), 173.242	To authorize transport of flammable liquids and corrosive liquids in the same outside packagings when the corrosive liquids are not in metal cans, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9507-X	DOT-E 9507	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize use of non-DOT specification full removable head salvage cylinder of 45 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressured hazardous materials. (Mode 1.)
9512-X	DOT-E 9512	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 except bottom outlet and each bottom inlet must be equipped with an additional shut-off valve, blank flange or a sealing cap, for shipment of liquid and semi-solid waste material. (Mode 1.)
9513-X	DOT-E 9513	American Cyanamid Company, Wayne, NJ.	49 CFR 173.343, 173.377	To authorize transport of an organic phosphate formulation in a bulk motor vehicle. (Mode 1.)
9528-X	DOT-E 9528	U.S. Department of Defense, Falls Church, VA.	49 CFR, Parts 100-199	To authorize transport of nonself-propelled aerospace ground equipment with gasoline or aviation fuel in the tanks. (Modes 1, 2.)
9529-X	DOT-E 9529	Viskase Corporation, Chicago, Il	49 CFR 173.121	To authorize shipment of carbon disulfide in DOT Specification MC-312 cargo tanks. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9530-X	DOT-E 9530	National Refrigerants, Inc., Plymouth Meeting, PA.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9536-X	DOT-E 9536	Transway Systems, Inc., Stoney Creek, Ont., Canada.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tank, patterned after the MC-307 or MC-312 specifications with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
9549-P	DOT-E 9549	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9549. (Modes 1, 3, 4.)
9552-X	DOT-E 9552	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 178.218-11	To authorize testing of DOT Specification 23G cylindrical fiberboard box once a year instead of once every six months. (Mode 1.)
9571-P	DOT-E 9571	GSX Services, Inc., Laurel, MD	49 CFR, Parts 100-117	To become a party to exemption 9571. (Modes 1, 2, 3, 4, 5.)
9577-X	DOT-E 9577	Altus Corporation, San Jose, CA	49 CFR 173.206, 173.247	To authorize shipment of a new battery set in a 30-gallon non-gallon non-DOT specification steel drum. (Mode 1.)
9599-P	DOT-E 9599	Puerto Rico Cryogenics Corporation, San Juan, PR.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 9599. (Modes 1, 3.)
9607-P	DOT-E 9607	Applied Laboratories, Inc., Columbus, IN.	49 CFR Parts 100-199	To become a party to exemption 9607. (Modes 1, 4, 5.)
9607-P	DOT-E 9607	Barrier Industries, Inc., Port Jervis, NY.	49 CFR, Parts 100-199	To become a party to exemption 9607. (Modes 1, 4, 5.)
9610-P	DOT-E 9610	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To become a party to exemption 9610. (Modes 1, 2.)
9610-P	DOT-E 9610	ACTIV Industries, Inc., Kearneysville, WV.	49 CFR 172.203(a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To become a party to exemption 9610. (Modes 1, 2.)
9610-X	DOT-E 9610	Federal Cartridge Company, Anoka, MN.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1, 2.)
9617-X	DOT-E 9617	Explosives Technologies International, Wilmington, DE.	49 CFR 177.848(f), Part 107, Appendix B(1).	To authorize of cargo vessel as an additional mode of transportation. (Mode 1.)
9632-P	DOT-E 9632	Chemical Industries of Northern Greece (SICNG), Thessaloniki, Greece.	49 CFR 173.315, 178.245	To become a party to exemption 9632. (Modes 1, 2, 3.)
9645-X	DOT-E 9645	Bonar Plastics Ltd., Lindsay, Ontario, CN.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To renew and authorize a design change in the polyethylene tanks to provide for a full drainage feature and modification to the ball valve feature. (Modes 1, 2.)
9658-X	DOT-E 9658	Fluoroware, Inc., Chaska, NM	49 CFR 173.119, 173.268, 173.299(b), 178.19, 178.253, Part 173, Subpart F.	To authorize the addition of 72% perchloric acid classed as an oxidizer and/or corrosive. (Modes 1, 2.)
9707-X	DOT-E 9707	Pepsi-Cola Company, Somers, NY	49 CFR 172.400	To authorize additional products and packaging configurations; request modification of placarding and shipping paper requirements and to add cargo vessel as additional mode of transportation. (Mode 1.)
9713-X	DOT-E 9713	Acadia Industries, Inc., Crowley, LA	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polyproylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and oxidizers (solid only). (Modes 1, 2, 3.)
9715-X	DOT-E 9715	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(12)	To authorize shipment of dicumyl peroxide, dry, an organic peroxide, solid, inside polyethylene bags in quantities of up to 40 pounds, overpacked in a DOT Specification 12B65 corrugated fiberboard box. (Modes 1, 3.)
9717-X	DOT-E 9717	Mobay Corporation, Kansas City, MO.	49 CFR 173.119(b), 175.3	To authorize shipment of certain flammable liquids in inside containers of up to 1 gallon capacity, overpacked in a DOT Specification 21C fiber drum. (Modes 1, 4.)
9722-X	DOT-E 9722	Russell-Stanley West, Inc., Rancho Cucamonga, CA.	49 CFR 173.266	To authorize several different types of materials classed as either corrosive material, poison B, flammable liquid, organic peroxide or oxidizer. (Modes 1, 2, 3.)
9722-X	DOT-E 9722	Russell-Standly Corporation, Red Bank, NJ.	49 CFR 173.266	To authorize pivaloyl chloride (trimethylacetyle chloride) classed as a corrosive material, as an additional commodity. (Modes 1, 2, 3.)
9723-P	DOT-E 9723	SET Environmental, Inc., Wheeling, IL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723-P	DOT-E 9723	Heritage Transport, Inc., Indianapolis, IN.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723-X	DOT-E 9723	Aqua-Tech, Inc., Port Washington, IL.	49 CFR 177.848(b)	To authorize shipment of "lab-packs" containing cyanides and cyanide mixtures with "lab-packs" containing acids and corrosive liquids in the same transport vehicle. (Mode 1.)
9727-X	DOT-E 9727	Sherex Chemical Company, Inc., Dublin, OH.	49 CFR 173.249	To authorize shipment of an alkaline corrosive liquid, n.o.s. in new or reconditioned DOT Specification 17H steel drums. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9728-X	DOT-E 9728	Smith Systems Operation, Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer. (Mode 1.)
9729-X	DOT-E 9729	Allied-Signal Inc., Morristown, NJ	49 CFR 173.246(a)(1), 178.61-5	To authorize shipment of corrosive material in stainless steel cylinders complying with requirements of DOT Specification 4BW with specific exceptions. (Modes 1, 2, 3.)
9733-X	DOT-E 9733	Rheem Container Corporation, Kingwood, TX.	49 CFR 173.164	To authorize manufacture, marking and sale of DOT Specification 35 polyethylene drums of six-gallon capacity for the shipment of chromic acid mixture, dry, or chromic acid, solid, classed as oxidizers. (Modes 1, 2, 3.)
9741-P	DOT-E 9741	Overseas Trading Co., Inc., McAdoo, PA.	49 CFR 173.260(a)(3)	To become a party to exemption 9741. (Modes 1, 2, 3.)
9741-X	DOT-E 9741	Moura Batteries Co., Inc., Edison, NJ.	49 CFR 173.260(a)(3)	To authorize shipment of batteries palletized and shipped as a unit without means of protection from any superimposed weight. (Modes 1, 2, 3.)
9741-P	DOT-E 9741	Batteries Recovery Services, Inc. (B.R.S.), Medley, FL.	49 CFR 173.260(a)(3)	To become a party to exemption 9741. (Modes 1, 2, 3.)
9747-X	DOT-E 9747	Aerosol Services Company, Inc., City of Industry, CA.	49 CFR 173.304(d)(3), 173.306, 175.3, 178.33-2, 178.33-7.	To authorize use of a non-DOT specification packaging, comparable to a DOT-2P except for size and thickness, for shipment of materials authorized in a DOT-2P (Modes 1, 2, 3, 4.)
9751-X	DOT-E 9751	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.81(c), 175.3	To authorize transport of a Class A explosive device in limited quantities as a Class C explosive. (Modes 1, 2, 3, 4, 5.)
9755-X	DOT-E 9755	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65	To authorize transport of packages Class A explosive which exceed the weight limitation in 49 CFR 173.65(a)(4) in a non-DOT Specification wooden box. (Mode 1.)
9768-X	DOT-E 9768	Defense Technology and Procurement Agency, Berne, Switzerland.	49 CFR 172.101, 173.57, 173.79, 173.93, 175.3.	To authorize additional Class A explosives for shipment by cargo aircraft. (Mode 4.)
9769-P	DOT-E 9769	Rollins Environmental Services (FS) Inc., Wilmington, DE.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-P	DOT-E 9769	CECOS International, Inc., Livingston, LA.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-P	DOT-E 9769	Great Lakes Environmental Services, Inc., Warren, MI.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Aqua-Tech, Inc., Port Washington, WI.	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Safety-Kleen Envirosystems Co., Inc., Manati, PR.	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Rollins Chempak, Inc., Wilmington, DE.	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9770-X	DOT-E 9770	AMSPEC Chemical Corporation, Gloucester City, NJ.	49 CFR 173.154(a)(2), 173.28(m), 178.118.	To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, Delaware. (Mode 1.)
9773-X	DOT-E 9773	SST Industries, Inc., Cincinnati, OH	49 CFR 173.154, 173.217, 173.245b.	To authorize manufacture, marking and sale of non-DOT specification fully removable head polyethylene drums of a rated volumetric capacity not exceeding 30-gallons, for shipment of certain viscous solids, and oxidizer solids. (Modes 1, 2, 3.)
9779-X	DOT-E 9779	Unichem International, Inc., Hobbs, NM.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. (Mode 1.)
9780-X	DOT-E 9780	Majestic Lubricating Company, Tulsa, OK.	49 CFR 173.119(a)(27)	To authorize shipment of four additional materials classed as flammable liquid in the approved packaging. (Mode 1.)
9781-X	DOT-E 9781	The Chlorine Institute, Inc., Washington, DC.	49 CFR 173.304(a)(2), 173.34(d), (e).	To renew and modify special provision 8e so salvage cylinders are not limited to use for leaks that cannot beg contained by using The Chlorine Institute's Kit A. (Mode 1.)
9781-X	DOT-E 9781	Jones Chemicals, Inc., LeRoy, NY	49 CFR 173.304(a)(2), 173.34 (d), (e).	To authorize use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9782-X	DOT-E 9782	Grumman Aircraft Systems, Bethpage, NY.	49 CFR 173.206	To authorize shipment of potassium metal in non-DOT specification container. (Modes 1, 2, 4.)
9783-X	DOT-E 9783	Helios Container Systems, Inc., Addison, IL.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b, 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2260 pounds each, and top and bottom outlets, for shipment of flammable solids, oxidizing materials, poison B solids and corrosive solids. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9785-P	DOT-E 9785	Tropical Shipping and Construction Co., Ltd., Nassau, Bahamas.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, 3.)
9789-X	DOT-E 9789	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize the addition of chromium complex solutions, classed as flammable liquids, a corrosive, n.o.s., for shipment in DOT Specification 57 portable tanks. (Modes 1, 2.)
9789-X	DOT-E 9789	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize shipment of flammable liquid, corrosive, n.o.s. in DOT Specification 57 portable tanks. (Modes 1, 2.)
9790-X	DOT-E 9790	Taylor-Wharton, Division of Harsco Corporation, Indianapolis, IN.	49 CFR 173.316, 178.57-21(a)	To authorize removal of section 8.a., which requires carrying the exemption aboard the motor vehicle. (Mode 1.)
9797-X	DOT-E 9797	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.304(a)(2)	To authorize shipment of anhydrous ammonia, classed as nonflammable gas, in non-DOT specification containers, identified as aluminum alloy heat pipes. (Mode 1.)
9797-X	DOT-E 9797	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 173.304(a)(2)	To authorize shipment of anhydrous ammonia, classed as nonflammable gas, in non-DOT specification containers, identified as aluminum alloy heat pipes. (Mode 1.)
9806-X	DOT-E 9806	Stone Container Corporation, Schaumburg, IL.	49 CFR 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.)
9822-X	DOT-E 9822	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.328(a)(2), 175.3, 173.331(b)(1).	To authorize shipment of poisonous liquid R&D Samples in packagings conforming to 49 CFR 173.331(b)(1). (Mode 1.)
9827-X	DOT-E 9827	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To authorize shipment of certain organophosphorus compounds, in a DOT Specification 34 polyethylene drum with a maximum capacity of 30 gallons. (Modes 1, 2.)
9828-X	DOT-E 9828	Mobay Corporation, Kansas City, MO.	49 CFR 173.365(a)(7)	To authorize shipment of azinphos methyl mixtures, solid, classed as Poison B contained in DOT specification 12B fiberboard boxes without being contained in PVA packets. (Modes 1, 2.)
9845-P	DOT-E 9845	Marsulex, Inc., North York, Ontario, Canada.	49 CFR 173.31(c), Retest Table I	To become a party to exemption 9845. (Mode 2.)
9889-X	DOT-E 9889	Assmann Corporation of America, Garrett, IN.	49 CFR Part 173, Subparts D, E, F	To authorize polyethylene portable tanks containing certain corrosive liquids, flammable liquids, or an oxidizer to be shipped in optional metal frames. (Modes 1, 2.)
9900-X	DOT-E 9900	Natico, Inc., Chicago, IL	49 CFR 173.217, 178.224-1	To authorize shipment of those hazardous materials (solids) presently authorized in DOT Specification 21C drums as additional commodities subject to compatibility with polyethylene top head. (Modes 1, 2, 3.)
9918-X	DOT-E 9918	Hughes Aircraft Company, Tucson, AZ.	49 CFR 172.101, column 6(b), 173.57(a), 175.30.	To authorize shipment of rocket ammunition with explosive projectile, identified as tow missiles, Classed as Class A explosives. (Mode 4.)
9951-X	DOT-E 9951	Olin Ordnance St. Petersburg, FL	49 CFR 173.56(b), 173.56(c)(1), 173.86(b).	To authorize shipment of explosive projectile, Class A explosive in a specially designed package (pallet top, skidded bottom configuration). (Modes 1, 2.)
9952-X	DOT-E 9952	Grief Bros. Corporation, Springfield, NJ.	49 CFR 178.131, Part 173, Subparts D, E, F, H.	To authorize an additional plastic cover or lid for metal drum containing those materials presently authorized in DOT Specification 37A steel drums. (Modes 1, 2, 3.)
9953-P	DOT-E 9953	Jevic Transportation, Inc., Willingboro, NJ.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9977-X	DOT-E 9977	Hercules Aerospace Company/ Aerospace Prod. Group, Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize the addition of a specifically designed trailer van configuration (Delta II Transporter) for a shipment of rocket motor, Class B explosive. (Mode 1.)
10001-P	DOT-E 10001	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10020-X	DOT-E 10020	Ailwaste, Houston, TX	49 CFR 173.245b	To authorize any corrosive solid, n.o.s. materials; to be shipped in non-DOT roll-on/off containers and to provide for additional containers of 3/16 inch steel instead of the current 1/4 inch steel. (Mode 1.)
10028-X	DOT-E 10028	E.I. Du Pont De Nemours & Company, Wilmington, DE.	49 CFR 173.255(a)(4)	To modify the exemption to authorize DOT Specification 112A400W tank car tanks for shipment of dimethyl sulfate, classed as a corrosive material. (Mode 2.)
10086-P	DOT-E 10086	Jaguar Cars Limited, Whitley, Coventry, EN.	49 CFR 172.101, 173.88(g), 173.94(a).	To become a party to exemption 10086. (Modes 1, 2, 3, 4.)
10090-X	DOT-E 10090	Clawson Tank Company, Clarkson, MI.	49 CFR 173.266, 178.19, 178.253, Part 173, Subparts D and F.	To authorize a large polyethylene portable tank of up to 550 gallon capacity for shipment of certain corrosive materials, flammabel liquids and an oxidizer. (Modes 1, 2.)
10096-P	DOT-E 10096	Energia E. Industrias Aragonesas, S.A., Madrid, Spain.	49 CFR 173.163	To become a party to exemption 10096. (Modes 1, 2, 3.)
10145-X	DOT-E 10145	Automatic Sprinkler Corporation of America, Cleveland, OH.	49 CFR 173.304(a)(2), 173.34(d)	To authorize cargo vessel, passenger carrying aicraft, cargo aircraft and rail freight as additional modes of transportation. (Mode 1.)
10159-X	DOT-E 10159	Novamax Technologies, (U.S.), Inc., Atlanta, GA.	49 CFR 173.154, 173.245, 173.266	To renew exemption originally issued on a emergency basis for shipment of certain corrosive and oxidizer materials in DOT Specifications 17E and 34 drums equipped with 3/4 inch vents plugs. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10186-X	DOT-E 10186	E. I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 179.105-4	To authorize the transportation of certain DOT Specification 112T tank car tanks with nonconforming thermal protection systems. (Mode 2.)
10196-X	DOT-E 10196	Penox Technologies Inc., Pittston, PA.	49 CFR 173.316, 178.57-2, 178.57-8(c).	To reissue exemption issued on a emergency basis to authorize the manufacture, mark and sell of non-DOT cylinders similar to DOT-4L for shipment of oxygen classed as non-flammable gas. (Mode 1.)
10199-X	DOT-E 10199	BAJ, Ltd., Banwell, England	49 CFR 173. 206(f)	To authorizes transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9848-N	DOT-E 9848	Hamilton Standard Div., United Technologies Corp., Windsor Locks, CT.	49 CFR 173.302	To authorize shipment of nitrogen, supplied during transportation by a DOT Specification 3AA cylinder with its valve open, to a non-DOT specification container described as an electrolysis module. (Modes 1, 2.)
9950-N	DOT-E 9950	Pyronetics Devices, Inc., Denver, CO.	49 CFR 173.306, 175.3	To authorize transport of a accumulator charge with a mixture of nitrogen and helium to 6000 psi with an actuating cartridge in the valve. (Mode 1, 2, 3, 4.)
9975-N	DOT-E 9975	Allied-Signal, Inc., Morristown, NJ	49 CFR 173.173.154	To authorized shipment of an aluminum/lithium alloy (powder and flake form) in a non-DOT specification stainless steel portable tank. (Mode 1.)
10023-N	DOT-E 10023	American Chrome and Chemicals Inc., Corpus Christi, TX.	49 CFR 173.164	To authorize use of large, collapsible plastic-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds (100 kg.) and fitted with top and bottom outlets, for shipment of oxidizing materials (solids only). (Modes 1, 2, 3.)
10037-N	DOT-E 10037	NCH Corporation, Irving, TX	49 CFR 173.286	To authorize transport of a chemical kit containing corrosive liquids and solids, flammable liquids and ORM-B materials, in plastic and glass bottles, not exceeding 2 ounces capacity each, with a screw cap. (Modes 1, 2, 3, 4, 5.)
10057-N	DOT-E 10057	Mauser Packaging Limited, Litchfield, CT.	49 CFR 178.115-7(a), Part 173, Subparts D, E, F and H.	To authorize manufacture, marking and sale of non-DOT specification steel drums of triple seam construction in compliance with DOT Specification 17C with exceptions. (Modes 1, 2, 3.)
10064-N	DOT-E 10064	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3, 178.65	To authorize manufacture, marking and sell of non-DOT specification, nonrefillable cylinders, for shipment of compressed air, nitrogen, argon and helium, classed as nonflammable gases. (Modes 1, 2, 4.)
10066-N	DOT-E 10066	Conax Florida Corporation, Petersburg, FL.	49 CFR 173.304, 178.36	To authorize manufacture, marking and sell of non-DOT specification cylinder for inflation of a vacuum packed life raft. (Modes 1, 2, 3, 4, 5.)
10086-N	DOT-E 10086	Breed Automotive Corporation, Booton Township, NJ.	49 CFR 172.101, 173.88(g), 173.94(a).	To authorize transport of airbag gas generators containing a flammable solid, in not more than 85 grams of propellant, in a DOT Specification 12B fiberboard box, gross weight not to exceed 65 pounds. (Modes 1, 2, 3, 4.)
10107-N	DOT-E 10107	Beta Power, Inc., Wayne, PA	49 CFR 173.206	To authorize transport of solid metallic sodium in a ceramicelectrolyte cup containing not more than 15 grams of sodium metal surrounded by a sulfur-carbon fiber composite which is contained in a mild steel, hermetically sealed shell. (Modes 1, 4.)
10111-N	DOT-E10111	Atlantic Steamers Supply Co., Inc., Hoboken, NJ.	49 CFR 173.86, 173.92, 175.3	To authorize transport of line throwing rockets (originally classed as Class B explosives) as Class C explosives in limited quantities and in specified packagings. (Modes 1, 2, 4.)
10116-N	DOT-E10116	Western Atlas International, Inc., Houston, TX.	49 CFR 173.102(a)(1), 175.3	To authorize transport of Class C explosive power devices in DOT Specification 12B fiberboard boxes instead of the packagings required by 49 CFR 173.102. (Modes 1, 3, 4, 5.)
10129-N	DOT-E10129	Olin Ordnance Division, St. Petersburg, FL.	49 CFR 173.56	To authorize shipment of an explosive projectile, Class A explosive in non-DOT specification packaging approved by the US Department of Defense. (Modes 1, 2, 3.)
10134-N	DOT-E10134	Fluid Systems Div. of Allied-Signal Aerospace Co., Tempe, AZ.	49 CFR 173.302, 175.3, 178.44	To authorize manufacture, marking and sale of a non-DOT specification pressure vessel comparable to a DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases. (Modes 1, 2, 3, 4, 5.)
10135-N	DOT-E10135	Ciba-Geigy Corporation, Hawthorne, NY.	49 CFR 173.168	To authorize shipment of lithium amide, powdered in a DOT Specification 56 portable tanks constructed of T-304 stainless steel. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10142-N	DOT-E10142	Tuscarora Plastics, Inc., Reston, VA.	49 CFR 173.119(a)(23), 173.245(a)(18), 178.210.	To authorize manufacture, marking, and sale of a non-DOT specification corrugated fiberboard boxes with handholes, with inside glass bottles, for the transportation of flammable and corrosive liquids. (Modes 1, 2, 3, 4.)
10146-N	DOT-E10146	L'Air Liquide, Sassenage, FR	49 CFR 173.315(a)	To authorize manufacture, marking and sell of super-insulated non-DOT specification portable tanks, for transportation of liquefied helium, refrigerated liquid, classed as a nonflammable gas. (Modes 1, 3.)
10147-N	DOT-E10147	E F I Corporation, San Jose, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize manufacture, marking and sell of non-DOT specification fiber reinforced plastic (FRP) full composite cylinder for certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, 5.)
10150-N	DOT-E10150	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.91(a)(2)	To authorize transport of a rocket flare in a MIL Specification M518 fiber tube which is equivalent to a DOT Specification 15A wooden box. (Modes 1, 3.)
10154-N	DOT-E10154	Olin Corporation, East Alton, IL	49 CFR 172.300, 173.10(c)(g), 173.107(c), (g).	To authorize shipment, in bulk, of scrap small arms primers and flash tubes which are contained in a velostat bag placed in 2 polyethylene bags placed in a ½ gallon round cardboard container covered with 2 fuel oil with up to 3 of the ½ gallon containers in a wooden box. (Mode 1.)
10156-N	DOT-E 10156	Van Leer Containers, Inc., Chicago, IL	49 CFR 175.3, Part 173, Subpart F	To authorize manufacture, marking and sell of a non-DOT specification combination packaging consisting of an inner plastic drum in a steel drum overpack for the shipment of certain corrosive liquids, n.o.s. (Modes 1, 2, 3, 4.)
10158-N	DOT-E 10158	Dynamit Nobel Special Chemistry, West Germany.	49 CFR 173.304	To authorize use of three non-DOT specification cylinders of foreign manufacture for three months. (Modes 1, 3.)
10170-N	DOT-E 10170	Cleveland Container Corporation, Cleveland, OH.	49 CFR 178.16-7, Part 173 subparts E.	To authorize manufacture marking and sell of a non-DOT specification, non-reusable, removable head polyethylene container for the shipment of flammable solids, oxidizers, and organic peroxides. (Modes 1, 2.)
10172-N	DOT-E 10172	Hoover Group, Inc. Beatrice, NE	49 CFR Part 173 Subparts D and T, Section 173.266.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, crosslinked high density polyethylene portable tank enclosed within a protective wire fram, for the shipment of corrosive liquids, flammable liquids or a oxidizer. (Modes 1, 2.)
10175-N	DOT-E 10175	Phillips Container, Cleveland, OH	49 CFR Part 173 Subpart F	To authorize manufacture, marking, and sale of non-DOT specifications 5-gallon capacity removable head polyethylene drums, for shipment of shipment of certain corrosive liquids. (Mode 1.)
10176-N	DOT-E 10176	Eveready Battery Company, Inc., Cleveland, OH.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of certain lithium batteries, classed as flammable solid, in specially designed packagings. (Modes 1, 2, 3, 4.)
10177-N	DOT-E 10177	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.80	To authorize a one time shipment of a demaged oil well perforating gun containing a small residue of explosives as a Class C explosive. (Mode 1.)
10178-N	DOT-E 10178	BW/IP International, Inc., Van Nuys, CA.	49 CFR 173.302, 175.3	To authorize manufacture marking and sale of a non-DOT specification pressure vessel (container), for transportation of helium. (Modes 1, 2, 4.)
10181-N	DOT-E 10181	Anglo Airlines, Limited, Crainley, W. Sussex, Engl.	49 CFR 172.101, 175.30	To authorize one-time transportation in cargo aircraft of detonating fuze, Class A and explosive porjectile, classed as Class A explosives. (Mode 4.)
10197-N	DOT-E 10197	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize use of a non-DOT specification wooden box for transportation of igniters for rocket motors. (Mode 1.)
10247-N	DOT-E 10247	VICI Metronics, Santa Clara, CA	49 CFR 173.4	To authorize shipment of permeation devices containing not over 5 grams of various hazardous materials—flammable and nonflammable compressed gases and Class A poisons; Class B poisons; various liquids which are both flammable and poison or flammable and corrosive. (Modes 1, 2, 3, 4, 5.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453-X	DOT-E 4453	Thermex Energy Corporation, Dallas, TX.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453-X	DOT-E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453-X	DOT-E 4453	Roundup Powder Company, Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6293-P	DOT-E 6293	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.21(b), 173.248	To become a party to exemption 6293. (Mode 1.)
EE 7835-X	DOT-E 7835	National Welders, Charlotte, NC	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
EE 7835-X	DOT-E 7835	National Welders Supply Co., Inc., Charlotte, NC.	49 CFR 177.848, Part 107, Appendix. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
EE 7887-X	DOT-E 7887	Estes Industries, Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize shipment of sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3, 4, 5.)
EE 7887-X	DOT-E 7887	Flight Systems, Inc., Raytown, MO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 7887-X	DOT-E 7887	Flight Systems, Inc., Raytown, MO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 7887-X	DOT-E 7887	Estes Industries, Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 8230-X	DOT-E 8230	Seastar Chemicals, Sidney, British Columbia, CN.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
EE 8348-X	DOT-E 8348	Frell, Inc., Corpus Christi, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-312 except for bottom outlet valve variation, for transportation of flammable or corrosive waste, liquids or semi-solids. (Mode 1).
EE 8363-X	DOT-E 8363	IMR Powder Company, Plattsburgh, NY.	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT Specification 12H 65 fiberboard boxes. (Modes 1, 3.)
EE 8445-X	DOT-E 8445	SET Environmental, Inc., Wheeling, IL.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8723-X	DOT-E 8723	Wampum Hardware Company, New Galilee, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8723-X	DOT-E 8723	Roundup Powder Company, Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8988-X	DOT-E 8988	Baker Sand Control, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
EE 9066-X	DOT-E 9066	Volkswagen of America, Inc., Troy, MI.	49 CFR 171.11 (see paragraph 8.d.).	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (Modes 1, 2, 3, 4.)
EE 9077-X	DOT-E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR, Parts 100-177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 gauge galvanized steel. (Mode 1.)
EE 9077-X	DOT-E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR, Parts 100-177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 gauge galvanized steel. (Mode 1.)
EE 9110-P	DOT-E 9110	General Plastics and Chemicals Co., Natick, MA.	49 CFR 173.163	To become a party to exemption 9110 (Modes 1, 2, 3.)
EE 9181-X	DOT-E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
EE 9549-P	DOT-E 9549	Mecano-Tech, Inc., Houston, TX	49 CFR 173.100(v), 175.30	To become a party to exemption 9549 (Modes 1, 3, 4.)
EE 9595-X	DOT-E 9595	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.64, 173.86	To authorize transport of certain unapproved Class A explosives for disposal in packagings not presently authorized for Class A explosives, in metal or fiber drums not exceeding 55-gallon capacity with liners consisting of two polyethylene leak-proof bags. (Mode 1.)
EE 9694-X	DOT-E 9694	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(5)(i).	To authorize use of MC-331 cargo tanks equipped with angle valves and pressure relief valves not presently authorized in the regulations. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9779-X	DOT-E 9779	Unichem International, Inc., Hobbs, NM.	49 CFR 173.119, 173.245, 178.253.	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. (Mode 1.)
EE 9848-X	DOT-E 9848	Hamilton Standard Div., United Technologies Corp., Windsor Locks, CT.	49 CFR 173.302	To authorize shipment of nitrogen, compressed, classed as nonflammable gas, in a non-DOT specification packaging. (Modes 1, 2.)
EE 10054-X	DOT-E 10054	Spectrum Chemical Manufacturing Corporation, Gardena, CA.	49 CFR 174.26(c)	To permit the shipping papers for packaging in non-placarded trailers and containers to be kept on the trailers and containers themselves. (Mode 2.)
EE 10180-X	DOT-E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10180-X	DOT-E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10199-N	DOT-E 10199	BAJ, Ltd. Avon, United Kingdon, England.	49 CFR 173.206(f)	To authorize transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)
EE 10199-X	DOT-E 10199	BAJ, Ltd., Banwell, England	49 CFR 173.206(f)	To authorize transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)
EE 10223-N	DOT-E 10223	TPI International Airways, Miami, FL.	49 CFR 172.101	To authorize one time transport of rocket ammunition with explosive projectile, Class A explosive in cargo aircraft. (Mode 4.)
EE 10237-N	DOT-E 10237	LaRoche Chemical Incorporated, Baton Rouge, LA.	49 CFR 173.29(c)(2), 174.50(d), 179.102-2.	To authorize transport of a DOT Specification 105A500W tank car tank with a defective safety relief valve but equipped with a "C" kit for the transportation of chlorine residue. (Mode 2.)
EE 10247-N	DOT-E 10247	VICI Metronics, Santa Clara, CA	49 CFR 173.4	To authorize shipment of permeation devices containing not over 5 grams of various hazardous materials—flammable and nonflammable compressed gases and Class A poisons; Class B poisons; various liquids which are both flammable and poison or flammable and corrosive. (Modes 1, 2, 3, 4, 5.)
EE 10250-N	DOT-E 10250	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR 173.314(c), Part 179	To authorize a one-time shipment of a residue of vinyl chloride in a damaged temporarily repaired DOT Specification 112T340W tank car. (Mode 2.)
EE 10250-X	DOT-E 10250	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR 173.314(c), Part 179	To authorize a one-time shipment of a residue of vinyl chloride in a damaged temporarily repaired DOT Specification 112T340W tank car. (Mode 2.)
EE 10251-N	DOT-E 10251	Borden Packaging and Industrial Products, Columbus, OH.	49 CFR 173.314(c), 179.106-3(c)	To authorize a one-time shipment of a residue of vinyl chloride in DOT Specification 105A200W tank cars without head shields and thermal protection. (Mode 2.)
EE 10252-N	DOT-E 10252	Dow Corning Corporation, Midland, MI.	49 CFR 173.314(c)	To authorize a one-time shipment of a DOT Specification 105A600W tank car filled with hydrogen chloride, refrigerated liquid, less than the required minimum permitted filling density. (Mode 2.)
EE 10253-N	DOT-E 10253	Drew Industrial Division, Ashland Chemical Company, Boonton, NJ.	49 CFR 178.19, 178.253, Part 173, Subpart D, F.	To authorize use of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame for the shipment of certain flammable liquids or corrosive liquids. (Mode 1.)
EE 10254-N	DOT-E 10254	University of Texas M.D. Anderson Cancer Center, Houston, TX.	49 CFR 178.104-3(e)	To authorize use of DOT specification 5M packages with a greater gross weight than normally authorized. (Mode 1.)

Note:—The above listed exemptions appearing with a suffix X have been granted emergency extension of their expiration date.

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5792-P	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 172.101, 173.314(c)	To become a party to exemption 5792 (Mode 2)
7052-X	Proxim Inc., Mountain View, CA	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5)
8698-P	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.320, 176.76	To become a party to exemption 8698 (Mode 3)
8824-P	Computalog Wireline Services, Inc., Houston, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To become a party to exemption 8824 (Mode 4)
9178-N	Markings, Inc., Hingham, MA	49 CFR 173.119	To authorize shipment of paint, classed as a flammable liquid, in non-DOT specificatiopn metal portable tanks not to exceed 200 gallon capacity. (Mode 1)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9324–N	Walker Systems, Inc., Houston, TX	49 CFR 173.277(a)(9)	To authorize shipment of sodium hypochlorite, classed as a corrosive material, in non-DOT specification cargo tanks made of titanium. (Mode 1)
9557–N	Delaware Valley Industrial Gases, Inc., Waterford Works, NJ.	49 CFR 173.34(1)	To authorize rebuilding of DOT Specification 4B, 4BA and 4BW cylinders in a configuration other than the original method of manufacturing. (Modes 1, 2, 3, 4, 5)
9919–N	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.304	To authorize shipment of a flammable gas, n.o.s., which is a mixture of up to 27% dimethyl disulfide in methyl mercaptan, classed as flammable gas, in a DOT Specification 105A300W tank car. (Mode 2)
10091–N	Allergan Optical, Irvine, CA	49 CFR 173.1200(a)(8)(ii)(e)	To authorize shipment of a buffered, normal saline pressurized with nitrogen gas which is nontoxic, nonflammable and nonhydrocarbon as an aerosol Consumer Commodity, ORM–D, in plastic containers which have been waterbath tested at 100 degree F. (Modes 1, 2, 3, 4, 5)
10091–P	Allergan Optical, Irvine, CA	49 CFR 173.1200(a)(8)(ii)(e)	To become a party to exemption 10091 (Modes 1, 2, 3, 4, 5)

Denials

7648–P Request by Blue & Gold Aviation Services, Brigham City, UT to authorize carriage of aerial illuminating flares for testing purposes in cargo-only aircraft denied July 24, 1989.

9806–X Request by Stone Container Corporation, Schaumburg, IL to authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bugs having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates denied September 7, 1989.

9806–X Request by Stone Container Corporation/Bag Division, Schaumburg, IL to auhtorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipments of corrosive solids and nitrates denied September 7, 1989.

9863–N Request by Liquid Air Corporation, Walnut Creek, CA to authorize retesting of DOT Specification 3, 3A, 3AA, 3AX and 3AAX cylinders by acoustic emissions testing denied August 11, 1989.

9863–P Request by L'Air Liquide Corp., Le Blanc-Mesnil, France to authorize retesting of DOT Specification 3, 3A, 3AA, 3AX and 3AAX cylinders by acoustic emissions testing denied August 11, 1989.

10054–N Request by Norfolk Southern Corporation and Subsidiaries, Norfolk, VA to permit the shipping papers for packaging in non-placarded trailers and containers to be kept on the trailers and containers themselves denied July 27, 1989.

10112–N Request by U.S. Chemical & Plastics, Canton, OH to authorize shipment of Methyl ethyl ketone peroxide solution, classed as an organic peroxide in four tubes placed in a polyethylene bag tied, containers without labeling denied July 24, 1989.

10136–N Request by Mitisubishi International Corporation, New York, NY to authorize a shipment of Nitric Acid (over 40%), classed as an oxidizer in a non-DOT 55-gallon steel drum with a polyethylene liner denied July 19, 1989.

10179–N Request by USA Fertilizer Inc., Pocatello, ID to authorize transport of Sulfuric acid classed as a corrosive material in non-DOT specification mild steel containers cradle supported and set in pairs, ridgidly mounted on 2 truck flat beds with each pair of tanks coupled together with piping at the top denied July 27, 1989.

10263–N Request by Pan Aviation, Inc., Miami, FL to authorize carriage of various explosives by cargo aircraft denied October 13, 1989.

Issued in Washington, DC, on November 24, 1989.

Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–28805 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–60–M

Date: December 5, 1989.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0001

Form Number: CF 7509

Type of Review: Revision

Title: Air Cargo Manifest

Description: The CF 7509 is the source of information that provides for the accountability, integrity and security of goods in air commerce that are imported into the United States.

Respondents: Businesses or other for-profit

Estimated Number of Respondents/ Recordkeepers: 150

Estimated Burden Hours Per Response/ Recordkeeping: 34 minutes

Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 116,586 hours

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–28817 Filed 12–8–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0229
Form Number: IRS 6406
Type of Review: Revision
Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.
Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 16,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 12 hours, 55 minutes.
Learning about the law or the form, 3 hours, 41 minutes.
Preparing the form, 6 hours, 51 minutes.
Copying, assembling, and sending the form to IRS, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 387,840 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

FR Doc. 89–28818 Filed 12–8–89; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 218; Rev. 2]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order has been revised to remove the expiration date of the authority delegated therein to the Director, Austin Compliance Center, since the Center will be a permanent operation. The text of the delegation order appears below.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, PFR:P:O, Room 3139, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: 202–566–4273, (not a toll-free telephone number).

Order No. 218 (Rev. 2)

Effective Date: December 11, 1989.

Austin Compliance Center

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by TO 150–10, I hereby delegate to the Director, Austin Compliance Center, all authorities delegated to Directors, Service Centers, that are required and necessary to administer and enforce the internal revenue laws with respect to the Collection, Criminal Investigation and Examination programs and activities. This authority may be exercised and redelegated consistent with the authorities delegated to Directors, Service Centers.

2. As of the effective date of the Order, all personnel performing any previously delegated function prior to the effective date of this Order are hereby authorized to continue to perform such function until changed by appropriate authority.

3. Delegation Order No. 218 (Rev. 1), effective October 1, 1988, is superseded.

Dated: November 30, 1989.

Approved:

Charles H. Brennan,
Deputy Commissioner (Operations).

[FR Doc. 89–28879 Filed 12–8–89; 8:45 am]
BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

December 6, 1989.

DATE AND TIME: December 13, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 907th Meeting—December 13, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3195-031, Sayles Hydro Association
CAP-2.
Project No. 10775-001, May Creek, Inc.
CAP-3.
Project No. 10745-001, Robert Hoe
Project No. 10602-001, Grover-Kelly No. 2 and RK-DK
CAP-4.
Docket No. UL89-11-001 Metropolitan District Commission of Boston
CAP-5.
Docket No. UL89-5-001, City of Niles
CAP-6.
Project No. 4412-008, Thornton Lake Resource Company
CAP-7.
Project No. 4435-008, Damnation Peak Power Company
CAP-8.
Project Nos. 2716-013 and 015, Virginia Electric and Power Company
CAP-9.
Project No. 7497-004, Metropolitan Sewerage District of Buncombe County, North Carolina
CAP-10.
Docket No. EL89-8-002, North American Hydro, Inc.
CAP-11.
Project No. 10705-000, Alpyn Creek Development Corporation
CAP-12.
Docket No. EL90-1-000, Enerco Corporation
CAP-13.
Docket Nos. ER90-29-000, ER89-66—000, ER89-125-000, ER89-228-000 and ER89-633-000, Canal Electric Company
CAP-14.
Docket No. ER90-26-000, American Electric Power Service Corporation
Docket No. ER89-470-000, AEP Generating Company
CAP-15.
Docket No. ER84-560-009, Union Electric Company
CAP-16.
Docket Nos. ER84-571-007, ER85-486-003 and ER86-300-003, Utah Power & Light Company
CAP-17.
Docket Nos. ER86-107-005, ER87-327-002 and ER86-397-001, Pacific Gas and Electric Company
Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas and Electric Company
CAP-18.
Docket No. EL89-7-001, Louisiana Power & Light Company
CAP-19.
Docket No. ER84-560-013, Union Electric Company
CAP-20.
Docket No. QF90-8-000, Pinellas County, Florida
CAP-21.
Docket No. ER84-560-022, Union Electric Company
CAP-22.
Docket No. ER88-411-000, Vermont Electric Power Company
CAP-23.
Docket No. EL89-50-000, Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company
Docket No. EL89-51-000, Lubbock Power & Light Company of the City of Lubbock, Texas, and the Cities of Brownfield, Floydada, and Tulia, Texas v. Southwestern Public Service Company
CAP-24.
Docket No. EL89-54-000, Department of the Navy v. Pacific Gas and Electric Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM89-15-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. RM89-6-001, Establishment of Deadlines for First Sellers to Make and Report Refunds
CAM-3.
Docket No. GP88-27-000, Quintana Petroleum Corporation, NGPA § 103 Determination, State of Louisiana Department of Natural Resources
CAM-4.
Docket No. GP88-45-003, Placid Oil Company

Consent Gas Agenda

CAG-1.
Docket No. RP90-43-000, Transwestern Pipeline Company
CAG-2.
Omitted
CAG-3.
Docket Nos. TM90-7-28-000, 001, 002, TM90-8-28-000, 001 and 002, Panhandle Eastern Pipe Line Company
CAG-4.
Docket Nos. TM90-4-30-000, 001 and 002, Trunkline Gas Company
CAG-5.
Docket Nos. RP88-217-013 and 014, CNG Transmission Corporation
CAG-6.
Docket No. RP89-230-002, El Paso Natural Gas Company
CAG-7.
Docket No. CP88-136-013, Texas Eastern Transmission Corporation
CAG-8.
Docket Nos. RP89-98-000 and RP89-133-000, Colorado Interstate Gas Company
CAG-9.
Docket Nos. RP90-40-000 and CP87-554-003, Algonquin Gas Transmission Company
CAG-10.
Docket No. RP82-55-046, Transcontinental Gas Pipe Line Corporation
CAG-11.
Docket No. RP90-51-000, ARCO Oil and Gas Company, Texaco and Texaco Producing Inc., Shell Gas Trading Company and Shell Offshore Inc. V. Transcontinental Gas Pipe Line Corporation
CAG-12.
Docket No. RP90-41-000, Southern Natural Gas Company
CAG-13.
Docket Nos. RP89-136-009 and 000, Northern Natural Gas Company, a Division of Enron Corp.
CAG-14.
Docket Nos. RP88-68-000, RP87-7-012, RP89-122-000, RP89-123-000, CP89-1915-000, CP89-1916-000, CP84-335-002, CP74-33-013, CP63-220-000, CP61-194-000 and G-2432-000, Transcontinental Gas Pipe Line Corporation
CAG-15.
Omitted
CAG-16.
Docket No. RP89-240-002, Northern Natural Gas Company, a Division of Enron Corp.
CAG-17.
Docket Nos. RP88-68-022 and RP87-7-061, Transcontinental Gas Pipe Line Corporation
CAG-18.
Docket No. RP89-237-001, North Penn Gas Company

CAG–19.
Docket Nos. RP89–160–008 and 006, Trunkline Gas Company
CAG–20.
Docket Nos. TF90–1–22–001 and TF90–2–22–001, CNG Transmission Corporation
CAG–21.
Docket Nos. RP86–168–016, *et al.*, RP86–168–016, *et al.*, RP86–15–000, *et al.*, RP87–55–000, *et al.*, RP88–43–000, *et al.*, RP88–56–000, *et al.*, RP88–119–000, RP88–187–000, *et al.*, RP88–207–000, *et al.*, PR116–000, CP83–452–034, RP89–181–000, TA81–1–21–000, *et al.*, TA81–1–21–022, TA82–1–21–001, 024, 027, TA87–4–21–000, 002, TA87–5–21–000, *et al.*, TA88–2–21–000, TA89–1–21–000, TC79–127, TC86–21–000, TQ88–1–21–000, TQ88–2–21–000, TQ89–1–21–000, TQ89–2–21–000, TQ89–3–21–000, TQ89–4–21–000, TM89–2–21–000, TM89–3–21–000, TM89–4–21–000, Columbia Gas Transmission Corporation
Docket Nos. RP86–167–012, *et al.*, RP86–14–000, *et al.*, and RP89–94–000, *et al.*, Columbia Gulf Transmission Company
CAG–22.
Docket No. RP89–255–001, Texas Eastern Transmission Corporation
CAG–23.
Docket Nos. RP89–82–005, RP89–37–005, RP89–38–005 and RP89–99–005, High Island Offshore System
CAG–24.
Docket Nos. RP85–209–024, RP86–93–008, RP86–158–011, CP86–246–004, RP87–34–010, TC88–6–009, RP88–8–011, RP88–27–018, RP88–264–015, RP88–92–019, RP88–265–005, RP88–263–013, RP84–42–007, RP89–138–005, CP88–6–006, CP88–329–002, CP88–478–002 and IN86–5–013, United Gas Pipe Line Company
Docket No. CP88–440–002, Southern Natural Gas Company
Docket No. CP87–524–009, Texas Transmission Corporation
CAG–25.
Docket Nos. RP88–240–006, RP89–10–004 and RP89–125–002, Panhandle Eastern Pipe Line Company
CAG–26.
Docket No. RP88–47–026, Northwest Pipeline Corporation
CAG–27.
Docket Nos. RP89–254–001, RP89–48–005 and RP89–222–003, Transwestern Pipeline Company
CAG–28.
Docket No. RP89–242–002, Tennessee Gas Pipeline Company
CAG–29.
Docket No. RP89–245–002, Paiute Pipeline Company
CAG–30.
Docket No. RP80–97–059, Tennessee Gas Pipeline Company
CAG–31.
Docket No. RP88–25–002, South Georgia Natural Gas Company
CAG–32.
Docket Nos. RP87–73–005 and RP90–22–000, Algonquin Gas Transmission Company
CAG–33.
Docket Nos. RP89–98–008 and RP89–133–005, Colorado Interstate Gas Company
CAG–34.
Docket No. RP89–225–001, South Georgia Natural Gas Company
CAG–35.
Docket No. RP89–132–009, El Paso Natural Gas Company
CAG–36.
Docket No. RP89–141–004, Sea Robin Pipeline Company
CAG–37.
Omitted
CAG–38.
Docket No. TM89–2–2–002, East Tennessee Natural Gas Company
CAG–39.
Docket No. CP88–99–006, Transwestern Pipeline Company
CAG–40.
Docket Nos. RP89–470–002 and CP88–522–007, Tennessee Gas Pipeline Company
CAG–41.
Docket No. RP89–135–000, Arkla Energy Resources
CAG–42.
Docket Nos. RP88–228–000 and RP88–249–000 (Phase II), Tennessee Gas Pipeline Company
CAG–43.
Docket Nos. RP88–259–021 and RP89–136–000, Northern Natural Gas Company, a Division of Enron Corp.
CAG–44.
Docket No. RP88–180–000 (Phase I), Trunkline Gas Company
CAG–45.
Docket No. OR89–2–000, Trans Alaska Pipeline System
Docket Nos. IS89–7–000 and 001, Amerada Hess Pipeline Corporation
Docket Nos. IS89–8–000 and 001, ARCO Pipe Line Company
Docket Nos. SI89–9–000 and 001, BP Pipelines (Alaska), Inc.
Docket Nos. IS89–10–000 and 001, Exxon Pipeline Company
Docket Nos. IS89–11–000 and 001, Mobil Alaska Pipeline Company
Docket Nos. IS89–12–000 and 001, Phillips Alaska Pipeline Corporation
Docket Nos. IS89–13–000 and 001, Unocal Pipeline Company
CAG–46.
Docket Nos. ST89–1708–000, ST89–1775–000 and ST89–2555–003, Louisiana Intrastate Gas Corporation
CAG–47.
Docket No. ST88–5804–001, Acacia Natural Gas Corporation
CAG–48.
Docket Nos. ST85–956–003, ST85–1572–001, ST86–6–001, ST86–1010–000, ST86–1064–000, ST86–1647–000, ST86–1792–000, ST86–2087–000, ST86–2505–000, ST86–430–000, ST87–588–000, ST87–589–000, ST87–1126–000, ST87–1525–000, ST87–1526–000, ST87–1527–000, ST87–1974–000, ST87–2399–000, ST87–3708–000, ST87–3709–000, ST87–3710–000, ST87–3711–000, ST87–3874–000, ST87–4257–000, ST88–585–000, ST88–1440–000 and ST88–1441–000, Acadian Gas Pipeline System
Docket Nos. ST88–5599–001, ST88–5761–001, ST88–5762–001, ST88–5763–001, ST88–5764–001, ST88–5765–001, ST88–5766–001, ST88–5767–001, ST88–5768–001, ST88–5769–001 and ST88–5770–001, Gulf South Pipeline Company
CAG–49.
Docket Nos. RI88–615–001 and RI88–616–001, Unicon Producing Company
CAG–50.
Docket No. CP89–144–001, Texas Eastern Transmission Corporation
CAG–51.
Docket No. CP89–636–001, Columbia Gas Transmission Corporation
CAG–52.
Docket No. CP89–1314–001, East Tennessee Natural Gas Company
Docket Nos. CP89–1866–001 and CP89–1884–002, Chattanooga Gas Company
Docket No. CP88–28–005, Nora Transmission Company
CAG–53.
Docket No. CP89–32–000, Southern Natural Gas Company
CAG–54.
Docket No. CP88–266–006, Viking Gas Transmission Company
CAG–55.
Docket No. CP89–252–001, Mississippi Valley Gas Company v. Gulf Fuels Inc., and ANR Pipeline Company
CAG–56.
Docket No. CP88–475–001, El Paso Natural Gas Company
CAG–57.
Docket Nos. CP87–5–005, CP87–92–005, CP88–197–003 and CP88–388–003, Texas Eastern Transmission Corporation
Docket Nos. CP87–312–005, CP87–313–002, CP87–314–002, CP88–128–003 and CP88–197–003, CNG Transmission Corporation
Docket No. CP87–554–002, Algonquin Gas Transmission Company
Docket No. CP89–6–002, Transcontinental Gas Pipe Line Corporation
CAG–58.
Docket No. CP87–57–008, Florida Gas Transmission Company
CAG–59.
Omitted
CAG–60.
Docket Nos. CP88–171–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. CP88–092–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88–94–000, 001, CP88–194,000 and 001, National Fuel Gas Supply Corporation
Docket Nos. CP88–195–000, 001, 002 and 005, Texas Eastern Transmission Corporation and CNG Transmission Corporation
CAG–61.
Docket Nos. CP88–239–000 and 001, Questar Pipeline Company
CAG–62.
Docket No. CP89–1752–000, Southern Natural Gas Company
Docket No. CP89–1754–000, Northern Natural Gas Company, a Division of Enron Corporation
CAG–63.
Docket No. CP88–265–000, Stringray Pipeline Company
CAG–64.
Docket No. CP88–696–003, Viking Gas Transmission Company (formerly Midwestern Gas Transmission Company)
CAG–65.
Docket No. CP90–131–000, Transcontinental Gas Pipe Line Corporation

CAG–66.
Docket No. CP89–1487–000, Associated Natural Gas Company, a Division of Arkansas Western Gas Company
CAG–67.
Docket Nos. CP88–6–002, 005, RP88–8–008 and 010, United Gas Pipe Line Company
Docket No. RP88–181–000, Sea Robin Pipeline Company
Docket No. RP89–161–000, ANR Pipeline Company
Docket No. RP89–168–000, ANR Storage Company
Docket No. RP88–262–000, Panhandle Eastern Pipeline Company
Docket No. RP89–160–000, Trunkline Gas Company
Docket No. CP88–265–000, Stingray Pipeline Company
Docket Nos. RP88–228–000 and RP89–35–000, Tennessee Gas Pipeline Company

I. Licensed Project Matters

P–1.
Project Nos. 8142–005, 006, 007 and 014, Henwood Associates, Inc. Order on rehearing of May 2, 1989, order.
P–2.
Project No. 7267–006, Joseph Martin Keating. Order regarding water quality certification.
P–3.
Project No. 6133–006, B.S. Inc. Order on appeal of denial of request for extension of the deadline to initiate project construction.

II. Electric Rate Matters

ER–1.
Docket No. ER89–672–000, Public Service Company of Indiana, Inc. Order on rate filing.
ER–2.
Docket No. ER85–477–002, Southwestern Public Service Company. Opinion and order establishing just and reasonable rates.

Miscellaneous Agenda

M–1.
Docket No. RM87–33–001, Hydroelectric Relicensing Regulations Under the Federal Power Act. Order on rehearing
M–2.
Reserved
M–3. (A)
Docket No. RM87–5–001, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on rehearing.
M–3. (B)
Docket Nos. RM87–5–002 and MG88–21–000, High Island Offshore System
Docket No. MG88–36–000, U–T Offshore System
Docket Nos. RM87–5–002 and MG88–32–000, Trailblazer Pipeline Company
Docket Nos. RM87–5–002 and MG88–27–000, Sea Robin Pipeline Company
Docket No. MG88–43–000, Kentucky West Virginia Gas Company and Equitrans, Inc.
Docket No. MG88–41–000, Superior Offshore Pipeline Company and Texas Sea Rim Pipeline, Inc.
Docket No. RM87–5–002, Northern Border Pipeline Company
Docket No. RM87–5–002 and MG88–30–000, Great Lakes Gas Transmission Company
Docket No. RM87–5–000, Arkla, Inc.
Docket No. MG88–18–000, Blue Dolphin Pipe Line Company
Docket No. MG88–34–000, Canyon Creek Compression Company
Docket No. MG89–8–000, Caprock Pipeline Company
Docket No. MG88–38–000, Columbia Gas Transmission Corporation, *et al.*
Docket No. RM87–5–000, Consolidated Natural Gas Company
Docket No. MG88–39–000, Enron Interstate Pipelines
Docket No. RM87–5–000, INGAA
Docket No. RM87–5–000, Maryland Peoples Counsel
Docket No. MG88–4–000, Mid Louisiana Gas Company
Docket No. MG88–8–000, MIGC, Inc.
Docket No. RM87–5–000, Natural Gas Pipeline Company of America
Docket No. MG88–25–000, Northwest Pipeline Corporation
Docket No. MG88–10–000, Ohio River Pipeline Corporation
Docket No. RM87–5–000, Pacific Interstate Transmission Company, *et al.*
Docket No. MG87–40–000, Pelican Interstate Gas System
Docket No. MG89–6–000, Phillips Gas Pipeline Company
Docket No. MG88–29–000, South Georgia Natural Gas Company
Docket No. MG88–42–000, Texas Gas Transmission Corporation
Docket Nos. RM87–5–000 and MG88–28–000, United Gas Pipe Line Company
Docket No. MG88–37–000, Valero Interstate Transmission Company
Docket No. MG88–46–000, Valley Gas Transmission, Inc.
Docket No. MG89–9–000, West Texas Gathering. Order on clarification of Order No. 497.

I. Pipeline Rate Matters

RP–1. (A)
Docket No. RP90–15–000, Equitrans, Inc. v. Texas Eastern Transmission Corporation. Complaint concerning implementation of gas inventory charge.
RP–1. (B)
Docket Nos. RP85–177–070, RP88–67–026 and CP88–136–016, Texas Eastern Transmission Corporation. Concerning a protest to the service agreement filing.
RP–2. (C)
Docket No. RP85–177–069, Texas Eastern Transmission Corporation. Concerning delivery of storage injection gas.
RP–2.
Docket No. TA87–1–37–009, Northwest Pipeline Corporation. Concerning initial decision on gas purchasing practices.

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1.
Docket No. CP78–123–028, Northwest Alaskan Pipeline Company
Docket No. CP78–124–013, Northern Border Pipeline Company
Docket No. CP90–93–000, Natgas (U.S.) Inc.
Docket Nos. CP79–400–004 and CP79–396–007, United Gas Pipe Line Company, Northern Natural Gas Company and Natgas (U.S.) Inc. Order (1) on an application by Northern Border Pipeline Company to abandon a transportation service for United Gas Pipe Line Company and for the issuance of a certificate to Northern Border to transport gas for Natgas U.S., Inc., and (2) on an application by United, Northern Natural Gas Company and Natgas U.S. for partial abandonment and amendment of existing exchange arrangement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29020 Filed 12–7–89; 4:03 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter to Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, December 12, 1989, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum and resolution re: Proposed amendments to part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which amendments establish, with respect to state and/or federal savings associations, interim application and notice procedures governing: (1) The conduct of, and requests to engage directly in, certain activities; (2) the divestiture of equity investments and junk bonds; and (3) prior notice of the establishment or acquisition of a subsidiary.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 7, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR. Doc. 89–28991 Filed 12–7–89; 1:49 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, December 15, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to clarify and simplify Regulation P (Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–29008 Filed 12–7–89; 3:14 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, December 15, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–29009 Filed 12–7–89; 3:14 pm]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:

TIME AND DATE: 10:00 a.m. December 18, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.

2. Thrift Savings Plan activities report by the Executive Director.

3. Labor Department's audit plans for 1990.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: December 5, 1989.

Francis X. Cavanaugh,

Executive Director Federal Retirement Thrift Investment Board.

[FR Doc. 89–28931 Filed 12–6–89; 4:55 am]

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-4]
RIN 2060-AC41

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

Correction

In rule document 89-21429 beginning on page 38044 in the issue of Thursday, September 14, 1989, make the following correction:

§ 61.271 [Corrected]

On page 38078, in the third column, in § 61.271(d)(1), in the fifth line, "December 13, 1989" should read "September 14, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-09-4111-08]

Environmental Impact Statement; Bridger-Teton National Forest Plan, WY

Correction

In notice document 89-28080 appearing on page 49363 in the issue of Thursday, November 30, 1989, make the following correction:

On page 49363, in the second column, in the first complete paragraph, the first sentence should read "BLM's preferred alternative for the Bridger-Teton LRMP is to offer lands for lease, in accordance with Alternative F, which is the Forest Service Preferred Alternative".

BILLING CODE 1505-01-D

federal register

Monday
December 11, 1989

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 240

Qualifications for Locomotive Operators; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR-9, Notice 1]

RIN 2130-AA51

Qualifications for Locomotive Operators

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to establish minimum qualifications for locomotive operators. The proposed rule would require railroads to have a formal process for training prospective locomotive operators and determining that all operators are competent before permitting them to operate a locomotive or train. The proposed procedures would require that railroads (1) make a series of four determinations about distinct aspects of a person's competency; (2) adhere to an FRA-approved training program for educating locomotive operators; and (3) employ standard methods for identifying qualified operators and monitoring their performance. FRA is proposing this regulation to minimize the potentially grave risks posed when unqualified people operate trains.

DATES: (1) Written comments must be received no later than March 1, 1990. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold public hearings on this proposal on January 25, and February 7, 1990, at the times and places set forth below. Any person who desires to make an oral statement at the hearings is requested to notify the Docket Clerk at least five working days prior to the hearing, by phone or in writing.

(3) FRA proposes to make the final rule effective on or about December 31, 1990. Addresses: (1) Prepared statements (five copies) and written comments (three copies) should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW.,Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) The public hearings will be held at the following locations and times:

—Chicago, Illinois (Thursday, January 25, 1990 at 9:30 a.m.)—Courtroom 25, United States District Court, 219 South Dearborn Avenue; and

—Washington, DC (Wednesday, February 7, 1990 at 9:30 a.m.)—Room 2230, Nassif Building, 400 Seventh Street SW.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Richard M. McCord, Deputy Regional Director for Safety, FRA, Portland, Oregon, (Telephone: 503–326–3011); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202–366–0628); or Edward R. English, Chief of Maintenance Programs Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202–366–9186).

SUPPLEMENTARY INFORMATION:

An Overview of the FRA Proposal

Section 4 of the Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. 100–342, 102 Stat. 624) requires that FRA issue regulations to establish any necessary program for certifying or licensing locomotive operators. In this notice, FRA proposes to establish such a program for evaluating the competence and fitness of virtually all individuals who operate a locomotive. FRA's proposal builds on features of the processes currently used by individual railroads in qualifying their locomotive operators.

Classification of Operators

In this proposed rule, FRA divides locomotive operators into four distinct classifications that reflect the varying levels of difficulty associated with different types of service: (1) Locomotive servicing operators; (2) restricted train service operators; (3) terminal train service operators; and (4) unlimited train service operators. Locomotive servicing operators would be authorized to move locomotives wherever needed for servicing or maintenance purposes. Restricted train service operators would be permitted to operate only short trains at low speeds. Terminal train service operators would be authorized to operate any locomotive or train, provided that the train's operations do not exceed the distance limits for yard and transfer trains established in FRA's train brake rules. Finally, unlimited train service operators could operate all locomotives and trains in the territory on which they are qualified.

Certification

Under the proposed rule, railroads would issue certificates to qualified locomotive operators and could not require or permit anyone to operate a locomotive unless that person held the proper certificate. FRA would require that, at a minimum, railroads consider five criteria during the certificating process: does the prospective operator have (1) the necessary visual and hearing acuity to perform such service, (2) the necessary knowledge, as demonstrated by passage of a written examination, and (3) the necessary skills to operate a locomotive or train, as demonstrated by passage of a performance skills test; and is the applicant (4) eligible to become an operator, as demonstrated by a review of the person's prior record of conduct as a railroad employee and as a motor vehicle operator, and (5) familiar with the physical characteristics of the territory over which he or she will operate.

Phasing in the Certification System

To ease the transition process, individuals already authorized to operate locomotives at the time the rule becomes effective would be presumed qualified for the purpose of this rule. That presumption would terminate within three years. During those three years, all "grandfathered" operators would have to become fully qualified under this rule.

Certification Decisions

FRA proposes to have railroads continue to discharge their preexisting duty to evaluate operators, but to improve the quality of their decision making process in several ways. For example, in making a determination concerning a person's vision and hearing a railroad will have to review a competent medical evaluation of the individual's acuity levels. If warranted, the operator will be required to use appropriate corrective devices while on-duty.

In making a determination concerning the person's knowledge, a railroad would have to administer a written examination covering the appropriate rules and safety practices of that railroad. Railroads would have

considerable discretion in developing these tests until experience under this rule permits greater standardization. To improve operator competency, FRA proposes to require supplemental training, triggered by the passage of time or by significant changes in operations.

In making a determination about performance skills, a railroad would have to administer a skills test by monitoring the person's computer simulated operation of a train or by monitoring actual operation of a test train. In addition, railroads would have to evaluate data concerning the person's routine performance of duty through an operational monitoring program that would include annual assessments of an operator's skills during routine operations. This testing of operator skills would be structured to reflect the varying levels of service.

Railroads would have to consider the individual's recent conduct as a railroad employee and as a motor vehicle operator—to the extent that the operator candidate voluntarily has created such a behavioral history. A point system would be used with respect to unsafe operation of a train or motor vehicle and alcohol or drug use while on duty as a railroad employee or while operating a motor vehicle.

Any single incident of substance abuse, whether associated with railroad employment or motor vehicle driving, would trigger an evaluation by a skilled professional (e.g., medical review officers and Employee Assistance Program (EAP) counselors) of the significance to be attached to such an event. Those who receive appropriate counseling or treatment after an incident would receive no points. Absent such professional findings, each incident would be assigned a value of three points and be considered under the system's criteria for eligibility. The professional would also have to consider whether the person is currently dependent on alcohol or drugs or has a treatable disorder that involves abuse of alcohol or drugs as a manifestation. If the professional concludes that such a condition exists and sufficient intervention has occurred, railroads could permit the person to perform service subject to the aftercare and testing provisions contained in FRA's alcohol and drug rules.

Any types of poor safety performance while at the controls of a train also would generate points. For example, operating without proper authority, excessive speeding, and tampering with safety devices would be the type of unsafe behavior to be assigned three points. Each of these incidents involves a very dangerous situation in which it is appropriate to hold the individual directly responsible.

Only four types of poor safety performance incidents while at the controls of a motor vehicle would have to be considered: reckless driving, excessive speeding, a moving violation in connection with a fatal accident, and driving with a revoked or suspended license. Each of these would generate two points. Certification candidates would have the responsibility for making their driving history available including data available from the National Driver's Register.

Candidates would be given an opportunity to review and comment on any adverse train operation or motor vehicle operation data before a railroad considered it. Any person with more than six points would be ineligible (at least for five years after his or her last incident). Those who have accumulated six points in two separate 5-year periods would become ineligible for life. Those with six points could be certified after they attend a training course. Individuals who have accumulated fewer than six points are eligible and must be certified absent some other disqualifying condition.

Training Future Operators

Standards for the training of future locomotive operators are included in this proposal. Railroads that elect to conduct such training programs would have to conform them to FRA's criteria concerning duration and content and obtain approval of their overall program. Students would be authorized to operate locomotives and trains when directly supervised by instructors.

Administration of the Program

Railroads would issue certificates, and operators must have that certificate in their possession while on duty. Certificates would have to be renewed at 36-month intervals using the same criteria discussed above. FRA requests comment on the wisdom of using longer intervals if the railroads employ an ongoing evaluation of operators' eligibility to remain certified. Absent such an ongoing evaluation program (i.e., one in which the railroads continually monitor for events that could push the employee's eligibility point total over six), FRA will rely on its civil penalty and disqualification procedures to respond to unlawful behavior by certified operators. FRA proposes to make certain operator actions, such as excessive speeding, that are not currently proscribed by regulation unlawful under the provisions of this rule.

Review of a railroad's decision not to certify would be performed by FRA. Initial review would be simple and prompt. Those dissatisfied with the initial review could request a formal, trial-type hearing procedure for further review. Hearing officer decisions could be appealed to the FRA Administrator before becoming administratively final.

In addition to performing this review function, FRA's role would be to monitor the railroads' adherence to the dictates of the certification program contained in this proposal. Resolution of some disputes concerning day-to-day administration of a particular railroad's program, including the employment implications of the rule's provisions, would be left to the existing processes for dispute adjustment developed under section 3 of the Railway Labor Act. This approach is similar to that taken by FRA in devising its alcohol and drug rules contained in part 219.

DETAILED DISCUSSION OF FRA'S PROPOSAL

The Industry in Perspective. Approximately 500 railroads are subject to FRA's safety jurisdiction. They differ enormously, ranging from large such as CSX Transportation, with 21,500 miles of track across 21 states and 41,500 employees, to very small operators such as the Tippecanoe Railroad with only 16 miles of track and one locomotive. Collectively, they use 25,000 locomotives, 1.4 million freight cars, and 7,000 passenger cars to transport 941 million ton miles of freight and 340 million passengers each year.

These railroads employ 34,000 people who are authorized to operate locomotives. Although individual railroads can identify these people, the industry has no centralized data base that contains information on their age, training, or experience. Nor do the large labor unions that represent these employees maintain such data.

Historical Trends. The need for qualified locomotive operators arose in England in 1812 when a railroad locomotive was first placed in commercial service. By 1830 the technology necessary to build the first steam locomotives had been brought to this country, and the first in a long line of "locomotive engineers" was employed to operate a train.

Rudimentary machines, such as the "Tom Thumb," required only basic skills to operate; no formal process was needed for selecting the people who would operate such equipment. As locomotives and the railroads on which they operate grew more complex, formal processes for selecting, training, and

qualifying locomotive operators were adopted.

Current Practices. Large railroads have devised careful selection and training programs that rely on criteria such as age, prior work experience, and physical condition. If a qualifying candidate desires to become a locomotive operator, the railroad provides training on the equipment and on the railroad's methods for operating trains, employing on-the-job teaching or classroom instruction or both. At the completion of this training, the railroad determines whether the candidate is qualified to operate a locomotive in train service on that railroad. Once deemed qualified as a locomotive operator, an individual will retain that status by meeting periodic physical examination criteria, passing periodic operating rules examinations, and not receiving adverse reports concerning duty performance.

Until recently, the effectiveness of this process for determining an individual's fitness to operate a train has not been the subject of intense debate. Although Federal and state governments historically have been actively involved in setting fitness criteria for operators of motor vehicles, ships and aircraft, they generally have not addressed locomotive operators. Even when they have adopted laws, the statutory provisions enacted by states have been limited (see for example, the laws of Alabama, Massachusetts, and New York). On the Federal level, the absence of governmental action can be accounted for, at least in part, by the relatively good record of locomotive operators and the fact that the necessary legal authority to issue rules on a broad range of rail safety subjects did not come into existence until 1970.

The Statutory Framework. When that broad authority was granted to FRA in the Federal Railroad Safety Act of 1970, analysis of the accident data indicated that FRA's first priority should be to address issues of track and equipment safety. Its focus appears to have been well placed, producing dramatic decreases in railroad accident rates. For example, since 1979 overall accident rates have declined 62.8 percent; track and equipment-related accidents have declined 75.2 percent; and on-duty fatalities for rail employees have declined 43.6 percent. No other mode of transportation even approached this magnitude of improvement during these years.

As the accident rates have fallen, the pattern of causation has gradually shifted. Human performance accidents, although also declining in absolute numbers, have become an increasing percentage of all accidents and a dominant cause of serious incidents. Until very recently, FRA has lacked the necessary tools. However with passage of the RSIA, a loophole in FRA's enforcement authority was closed when the agency acquired enforcement jurisdiction over individual railroad employees. That jurisdiction was a practical necessity for the establishment of an effective locomotive operator licensing or certification program.

Since the RSIA was enacted on June 22, 1988, FRA has instituted multiple regulatory proceedings on a wide variety of topics, including three that directly address the issue of human performance. On July 22, 1988, FRA revised all of its existing safety rules to make civil penalties applicable to individuals who commit willful violations of those rules. (See the July 28, 1988 issue of the **Federal Register**, 53 FR 28594.) Next, FRA issued a rule to prohibit tampering with safety devices and operational monitoring devices mounted on locomotives. (See the February 3, 1989 issue of the **Federal Register**, 54 FR 5485.) Finally, FRA issued proposed rules to establish the procedures for disqualifying an individual from holding a safety-sensitive function. (See the December 9, 1988 issue of the **Federal Register**, 53 FR 49695.)

The scope of this regulatory program and the magnitude of the task involved in devising an appropriate qualification system for locomotive operators have made it virtually impossible for FRA to issue a final rule in this proceeding prior to June 23, 1989, the target date established by section 4 of the RSIA. Faced with responsibility for addressing an ambitious regulatory agenda and the need to create regulations that effectively address Congressional safety concerns, FRA quickened its regulatory pace to the degree that it could legitimately do so. It has delayed issuance of a regulatory proposal in this proceeding because the number and complexity of the issues required additional time.

The Need for Regulations. In determining the need for any regulation concerning locomotive operator qualifications, FRA identified those train accidents that occurred during the period 1977 through 1987 that were caused by human factors and that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Within the 18,140 human-factor-caused accidents reported during the period, FRA identified a total of 6,990 train accidents that resulted in 61 fatalities, 1,482 personal injuries and some $387 million in property damage that can be ascribed in whole or in part to poor locomotive operator performance. These accidents included 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and 171 caused by improper use of the independent brake valve. These appear to stem from poor performance curable through improved training and monitoring. Also within that total are 1,649 accidents attributed to excessive speed and 3,375 caused by excessive in-train force levels that may not be as directly related to training as to operational monitoring. In many of these accidents the causation appears to relate to either inattentiveness or misconduct.

FRA encountered some difficulty in analyzing the data because of the absence of specific information that indisputably identifies which inadequacies are really the causal factor. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. Accident investigations do not generally identify whether the failure of locomotive operators to take effective action stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although FRA has not included draft regulatory text on this topic, FRA is considering the need to revise its accident reporting regulations to require railroads to provide additional data about the qualifications of the locomotive operator when a railroad cites the possibility of poor operator performance as the cause or contributing cause of an accident.

Despite the limitations inherent in the available accident data, FRA believes that there is a need for regulations concerning the qualifications of individuals who operate a locomotive. Consequently, FRA proposes to establish a program under which each railroad will determine that every person it authorizes to operate a locomotive meets or exceeds Federally prescribed minimum standards. For discussion purposes FRA has broken its presentation of the components of this program into the following topical areas: (1) Its scope and nature of the system, (2) its structure, and (3) its administration.

I. The Scope and Nature of the Proposed Program

(a) Types of Operations That Would Be Affected

In general, railroads permit three types of employees to operate locomotives: "engineers," "hostlers," and "transportation officers." These employees may also be known as yard engineers, hostler attendants, road foremen of engines, or traveling engineers. Regardless of title, those authorized by the railroad to operate a locomotive are generally identified on internal company lists. Such arrangements are typical of the 23 railroads that handle more than 80 percent of the freight and carry more than 90 percent of the passengers transported by rail in this country. As would be expected, the larger the railroad, the more elaborate is its program for control of locomotive operation. Although most railroads have used this discretion wisely, a railroad may ignore, misconstrue, or change company policy to meet short term objectives. When that has occurred, the absence of Federal standards has limited FRA's ability to redress the situation. FRA also has found itself handicapped in quickly responding to situations in which there was no rational company policy or where a rational policy was not adhered to.

FRA's proposal covers nearly every person who operates a locomotive, including many not known as "locomotive engineers," and nearly every railroad subject to its safety jurisdiction, including many that may lack a clear company policy on the qualifications to perform such functions. However, as discussed below, certain limited exceptions would be carved out based on the type of railroad operation or the function being performed.

FRA proposes to exclude three types of operations from this rule. The first would be for tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system (i.e., the standard gage, interconnected network of railroads that makes possible the interchange of goods and passengers throughout the nation). These rail operations frequently do not come under FRA's other rules because they are conducted on a seasonal basis and use short, physically isolated segments of track that never see any other type of operation. (They are covered, however, by FRA's accident reporting rules.) Some do not even use standard gage tracks for their operations. They have been growing in number, volume of passengers carried, frequency of service and duration of their operating season. Many have expanded their equipment rosters and have been electing to use older steam locomotives to propel their trains.

These excursion railroads have been an increasing source of concern for FRA, but prior to imposing qualification standards on their locomotive operators, FRA has concluded that there is a need to examine the broader question of general regulation of these railroads. FRA intends to initiate a safety inquiry to examine the threshold question of whether there is a need to impose safety regulations on these types of operations. FRA will then evaluate the need to bring such operations within the scope of this rule.

The second proposed exclusion addresses operations within the confines of industrial installations. These are commonly referred to as "plant railroads" and are typified by operations such as those in steel mills that do not go beyond the plant's boundaries. Third, the rule would not apply to rapid transit operations in urban areas. The section-by-section analysis of this proposal contains some additional discussion of this topic to help illustrate how this proposal would apply to certain operations that may qualify as rapid transit or as plant railroad. For a general discussion of the extent of FRA's safety jurisdiction, see the relevant portion of Appendix A to 49 CFR Part 209.

FRA also proposes to exclude two types of functions frequently performed on many railroads. This exclusion is intended to permit employees to move locomotives very short distances for inspection or maintenance purposes. FRA has concluded that this function is so minimal as not to warrant coverage under this proposal. Thus, FRA proposes to exclude employees required to operate a locomotive as an incidental aspect of their inspection, maintenance, and servicing duties. This exclusion would apply in two settings. The first involves individuals who operate locomotives only within the confines of a locomotive servicing facility isolated from general operations in accordance with the blue signal regulations (49 CFR 218.29). FRA believes that these limitations are sufficient to provide for the safety of operations. Other considerations are that the locomotives generally do not move at speeds exceeding 5 miles per hour, do not haul cars, and proceed under a very simple set of operating procedures.

Second, FRA proposes to permit an employee to move a locomotive for a distance of not more than 100 feet when necessary to perform an inspection or maintenance task outside a locomotive servicing facility. This exception would apply, for example, when the wheels of a locomotive need to be rotated a fraction of their diameter to permit an inspection of their tread and rim surfaces. Exclusion of people who perform such functions from this rule should not be interpreted as having a bearing on their inclusion or exclusion from the Hours of Service Act coverage where different considerations obtain.

(b) FRA's Approach to Certification

FRA believes that a basic level of instruction and training is required to instill the knowledge and skills necessary to safely operate a train. Since short trains moving at slow speeds in flat terrain are relatively easy to operate, FRA proposes to establish minimum levels of instruction, knowledge, and skill for such operators. For those who will operate longer trains, or trains that move at higher speeds or function in more complicated operational settings, FRA believes that higher levels of instruction, knowledge, and skills are required.

FRA's proposal divides operators into three major proficiency levels. Proficiency in the skills required at a lower level does not entitle the operator to perform duties at a higher level. However, an employee's level of competence should be fully transferable to a new environment. Simply stated, a person competent to run a train on one railroad is fully competent to perform a comparable task elsewhere, provided he or she has been qualified on the territory involved.

FRA's approach recognizes that railroad operating rules contain more similarities than differences for locomotive operators, at least among comparable railroads. The railroads themselves have been striving for a more uniform set of rule books. The recently adopted Uniform Code of Operating Rules, or "code of the west," and the new Northeast Operating Rules Advisory Committee ("NORAC") rule book are examples of this effort to use a more uniform and regionally standardized system for operating trains. Since remaining differences are relatively minor, orientation of a transplanted locomotive operator should pose no real hurdle.

Traditional industry thinking places a large premium on the operator's familiarity with the physical characteristics of the territory over which he or she will be performing service. FRA agrees but believes that territorial familiarity and train handling skill are segregable elements of the

education of a locomotive operator. FRA's proposal builds on this fact.

(c) Consequences of Certification

FRA is proposing to establish minimum qualification standards for locomotive operators. As with its other regulations, adoption of FRA minimum standards would permit railroads to adopt or continue in force more rigorous qualification criteria. FRA's proposal is designed to ensure that no unqualified person is authorized or permitted to operate a locomotive. A railroad may permit an individual to operate a locomotive only after it determines that the person has the competence to do so.

FRA's proposed rule would have no direct impact on any person's employment relationship with a railroad. The employment consequences of an individual's meeting or failing to meet FRA criteria are beyond the scope of this rule and would be left for resolution under employment contracts. Certification would mean that a railroad has affirmatively determined that an individual meets the minimum Federal qualifications required to function as a locomotive operator. An individual would not be entitled to employment as a locomotive operator because he or she is certified under this rule.

II. The Certification System

(a) Classes of Service

FRA proposes to establish the five classes of service for locomotive operators outlined below. In describing these classes, FRA has avoided references to industry terms previously used to identify those who operate locomotives. The classes of service embody ascending levels of proficiency that address these key factors: variations in controlling a train that result from the number, nature, and placement of the cars being hauled; variations related directly to the speed or changes in speed of the train and the alternatives available for responding; and finally the variations that result from changes in physical conditions including ascending and/or descending hills.

(1) Student Operators

This lowest classification would permit railroads to educate students on the operation of trains and to provide actual experience at the controls without regard to prior experience. FRA would ensure safety by having student operation occur only under the direct supervision of a fully skilled operator. Student operator classification could be used, for example, to educate new employees or to teach current operators to handle more difficult situations.

(2) Locomotive Servicing Operators

The next higher service classification would apply to individuals who have the levels of knowledge and skills needed to handle a locomotive or a group of locomotives without cars attached. Although the equipment handling skills required to operate a locomotive without cars attached are relatively simple, such operation can require significant knowledge of the railroad's operating practices and physical characteristics. For example, railroads often expect their personnel to move locomotives from servicing areas to train yards or to outlying points. Although fully competent to perform such operations, these individuals may not be qualified to operate locomotives hauling rolling stock.

(3) Restricted Train Service Operators

The next higher classification would apply to individuals who have sufficient knowledge and skill to operate simple trains, defined as trains (1) having fewer than thirty cars in the consist, (2) moving at a speed not exceeding 20 miles-per- hour, and (3) moving in an area where only one train at a time is operated. FRA believes that handling trains that exceed these criteria requires significantly greater knowledge and skill.

(4) Terminal Train Service Operators

The next higher classification would apply to individuals who have sufficient knowledge and skill to operate a wide variety of train consists, but who are not qualified to perform service in high speed operations over extensive territories. FRA proposes to permit these individuals to operate trains of any size at any prescribed speed under any operating scheme, provided the train does not travel more than 20 miles from its point of origin to its destination. Operations that do not exceed twenty miles are currently referred to as "transfer train or yard train movements" under FRA rules and are performed under a wide variety of operating practices. Train size and make-up vary significantly as do operating speeds and the impact of changes in topography. However, these variations are held within a tolerable range by the 20 mile limitation.

(5) Unlimited Train Service Operators

This highest level of proficiency would include those individuals who have sufficient knowledge and skill to operate any form of train consist and whose skills are sufficiently high to perform service in high speed operations over extensive territories. Individuals at this level would have the knowledge and ability to predict with some accuracy the performance of different consists under different operating conditions and the skill to properly maneuver the train through those different operational environments.

(b) Determinations Required Under the Certification Process

Consistent with most current practices in the industry, FRA proposes that each railroad have a program under which it would make four determinations before allowing an individual to operate a locomotive or train. FRA's proposal would establish uniform criteria for determining whether an individual: (1) has the visual and hearing acuity needed to perform their responsibilities; (2) has sufficient knowledge and training to safely operate a locomotive; (3) has effectively demonstrated that they possess the appropriate operating performance skills; and (4) has the requisite safety performance history to be eligible to assume the responsibilities of operating a locomotive.

(1) Physical Capacity

Each person who operates a locomotive must have sufficient vision to receive all manner of visual information concerning the movement of that equipment if there is going to be a reasonable expectation that the unit will be moved safely. In examining the available data, FRA has reason to believe that many of the nearly 500 railroads in this country do not have any visual acuity criteria for their locomotive operators. Although major railroads tend to employ a commonly accepted criteria, FRA has been advised that these criteria are not being fully complied with after an individual has been initially hired. Similarly, each person who operates a locomotive must have sufficient hearing acuity to identify a variety of information that is communicated audibly including warning signals and voice communications. Given the increased reliance on radio transmission of operating information, there appears to be an increasing need to assure minimum acuity levels. FRA believes that the data concerning current industry practice for visual acuity conditions is also applicable here.

FRA proposes that each prospective operator be given a periodic examination by a qualified medical person to determine whether they meet FRA mandated vision and hearing acuity standards. Although more

comprehensive physical qualifications could be required for locomotive operators, FRA does not believe that necessary at this time. Unlike other modes of transportation, a railroad has some inherent, safety features that can mitigate an operators physical incapacitation. For example, it is rare that an operator is the sole occupant of the locomotive cab; and other occupants can simply bring the equipment to a halt. In addition, most locomotives are equipped with a variety of safety devices that cause a train to stop if an operator is unresponsive. Similarly, the fact that trains must follow the pathway dictated by the tracks reduces the risk that the equipment will veer out of control.

Analysis of accident data relevant to this issue proved to be difficult, since even dramatic medical events, such as heart failure, that caused a train accident are difficult to retrieve from the available data base. In part, the limitations of the data reflect the fact that the pre-accident medical condition of railroad employees has rarely been the subject of detailed inquiry by accident investigators. FRA's proposal for the particular thresholds for vision and hearing acuity were derived from published FRA research efforts (see Recommendations Concerning Critical Factors in Railroad Employee Medical Standards; C. Abernathy; Report No. DOT-TSC-RR628-PM-76-1; issued March 1976) and analogous DOT requirements for other transportation modes. FRA's proposals are compatible with existing industry guidelines on this subject.

FRA recognizes that there may be instances in which a railroad would be willing to allow a given operator to continue in service even though that person has some impairment that prevents them from meeting these standards. FRA anticipates it will resolve such issues in the context of a waiver proceeding. In such a context FRA would have sufficient detailed information available to make an informed assessment of the safety implications of deviating from these acuity standards.

(2) Knowledge: Training and Testing To Assure Competency

Locomotive operators must know about personal safety, railroad operating practices, general mechanical practices, proper train handling procedures, and proper safety procedures. FRA proposes to establish (a) minimum training requirements to assure that prospective locomotive operators receive an adequate education on those topics and (b) testing requirements to ensure that prospective operators have acquired and retained the requisite knowledge.

(a) Training Programs. FRA proposes to address both training and retraining of locomotive operators. Not all railroads provide the initial education of their employees on how to operate locomotives and trains. Instead, some seek people with prior experience on other railroads. Since the pool of experienced locomotive operators has been fairly large in the last decade, as the larger railroads in the industry have significantly reduced their work forces, small and regional railroads have had no difficulty hiring to meet their staffing needs. Even railroads that do conduct extensive training programs for other jobs do not always do so for locomotive operators. FRA is therefore not proposing a requirement that each railroad have a training program for student operators. But once a carrier elects to conduct a training program for student operators, it would be required to submit that program to FRA for approval.

FRA proposes to require that a railroad with a student training program in progress on the effective date of this rule file that program with FRA. If a program is not in progress on the effective date of this rule, the railroad that elects to initiate one would have to file that program with FRA at least 60 days before it commences training. Upon receipt, FRA would review the program and either approve it or ask for modifications. Such an approval process creates the potential for delay of a program; accordingly, FRA proposes to permit railroads to presume that their program has been approved unless FRA informs them to the contrary, in writing, within 60 days after the program is filed. FRA has also proposed minimum criteria for the structure, content, and duration of any program. Like the distinctions FRA is proposing for the classes of service, the proposed student training program contains gradations that reflect increasing complexity implicit in operating longer trains at higher speeds over more difficult terrain.

FRA's training curricula proposal builds on the foundation laid by the FRA research efforts that produced the Hale study (Proposed Qualification Requirements for Selected Railroad Jobs; A. Hale and H. Jacobs; Report No. DOT-TSC-736; issued May, 1975). It also is in keeping with the student training programs FRA has observed during the last several months on some 20 railroads that FRA studied or conferred with prior to developing this NPRM. FRA's proposed minimum training standards address classroom instruction and skill development and the establishment of curriculum requirements. Details of the proposal are discussed at greater length later in this preamble.

Continuing education is also addressed in this proposal. At a minimum, all railroads currently insist that an already skilled operator be trained on the physical characteristics of a given territory prior to his or her initial operation over that territory or when a significant period of time has elapsed since the person last operated a train over the line. A similar need arises when an experienced locomotive operator is assigned to a new territory. The advent of new technology also generates a need for additional training, e.g., the introduction of the airflow method of conducting airbrake tests or the introduction of advanced train control systems. In addition, some railroads provide refresher training to maintain and improve the knowledge of their locomotive operators.

FRA proposes to require that all railroads have a program to address the need for supplemental training. Although FRA has limited evidence to support the need for an industry wide refresher type training, FRA's proposal would entail only a minimal level of additional training for locomotive operators. The need for additional training would be triggered by the passage of time, the introduction of new technology, or changes in the territory over which the locomotive operator will be performing his or her duties.

(b) Testing Programs. FRA proposes to require that all prospective locomotive operators take a written examination to measure their knowledge of the relevant safety practices and procedures. FRA would set some criteria for the tests and prescribe consequences for failure of initial tests or subsequent periodic tests.

The railroads would have considerable latitude in designing these tests. However, FRA would require that the test be closed-book, cover at least five subject areas and contain no fewer than 150 questions. The passing score would be 85 percent. For railroads whose operators encounter electronic signal systems, the portion of the test relating to signal indications would require a score of 100 percent.

FRA's decision not to propose greater control over these tests reflects several factors. Every railroad is different in some respect. To the extent that a universal body of knowledge can be extracted from the railroads' individual safety practices and rules, FRA cannot

design a universal testing program in the brief time envisioned by Congress.

In the long term, FRA believes that the best approach may be to emulate that used by some professions, including the legal profession: a two-part examination, the first testing general knowledge and the second detailed or applied knowledge. Such a testing program would evaluate each operator's fundamental knowledge and then his or her knowledge of the unique operational factors present on the particular railroad.

FRA seeks the views of all parties on the wisdom of pursuing the creation of such a testing system and on the time and resources needed to establish such a system. Assuming that the creation of such a testing program is appropriate, but that it can not be accomplished prior to adoption of a final rule in this proceeding, what is a realistic framework for converting to such a system?

At this point, FRA proposes to allow railroads to continue using their current tests if they meet FRA criteria.

FRA will examine the tests being used by railroads to monitor the quality of their testing and if necessary seek improvements in a particular test program. FRA anticipates that railroads, particularly large railroads, will continue to use the test programs currently being administered because these generally exceed FRA's minimum requirements. For others these proposals will require that new or improved tests be developed or that grading criteria be improved.

FRA proposes to have these knowledge tests administered to each locomotive operator at least once every 36 months, and FRA proposes specific consequences for a person who fails these tests. Those consequences of failure distinguish between the case in which the test constitutes the initial examination of an operator and the case in which it is a subsequent periodic reexamination of a previously certified operator.

(i) *Consequences of Failing Initial Testing.* Subsequent to adoption of this proposed regulation, at least three different groups of people can be expected to take an initial examination. FRA identifies the first of these groups as "grandfathered operators." As noted earlier, FRA anticipates that this certification rule will be phased into effect by allowing railroads to presume for a limited period of time that existing engineers are qualified. This interim presumption of qualification, or grandfathering, requires that such grandfathered operators be administered their initial knowledge test within three years of the effective date of this rule. If such a grandfathered operator fails to achieve a passing score when they initially take this test, FRA proposes to allow that person to continue to operate locomotives for a period of not more than sixty days. During that interval the grandfathered operator must wait a minimum of thirty days and then retake a similar exam. If the grandfathered operator fails the second examination, then he or she cannot be permitted to operate a locomotive until he or she passes a second reexamination. FRA would permit an exception to that prohibition for instance when the railroad wants to permit such a person to operate under the direct supervision of an instructor. A failure of all three tests by a grandfathered operator will necessitate that the person complete a training program before again attempting to pass this testing.

FRA proposes a similar chain of consequences for the second and third groups. The second group would be comprised of student operators who are taking their initial tests after completing a training program. The third potential group of test subjects is composed of individuals who have acquired sufficient education about railroad operations and are perceived as potentially competent to qualify as a locomotive operator but do not meet the criteria for being a grandfathered operator or a student operator. Such people typically could include individuals who were previously deemed fully qualified operators but were not employed or were ill during the interval for grandfathering designation. The major difference is that a person who belongs to either the second or third group will not be permitted to operate a locomotive or train without direct supervision until successful passage of the test.

(ii) *Consequences of Failing Periodic Testing.* FRA proposes that a similar chain of consequences apply to individuals who fail subsequent periodic examinations. The failure of an initial periodic test will start a sixty day probationary period within which the person must successfully pass a retest. During that interval a railroad may, but is not required to, permit the person to continue to operate locomotives and trains under the direct supervision of a qualified operator. Failure of three examinations would also trigger the need to take a retraining program.

In devising these test failure consequences, FRA does not intend to nullify collective bargaining arrangements or company policies that establish more stringent or restrictive approaches to questions of retesting. FRA's intent here is to prevent railroads from adopting more permissive approaches, and either continually exposing people to tests until they pass or allowing people who fail tests to remain in service for indefinite periods prior to retesting.

(3) Performance Skills: Training and Testing Required

In order to be a locomotive operator, each person needs certain minimum performance skills and for each class of service those performance skills become more complex. In a manner similar to that described above, FRA proposes to establish (1) minimum training requirements to assure that future prospective locomotive operators develop adequate train handling skills and (2) testing requirements to ensure that all prospective locomotive operators possesses the requisite train handling skills.

(1) *Training Programs.* As noted above, FRA is not proposing a requirement that each railroad have a basic training program. It will be feasible for many railroads to meet this training requirement simply by hiring operators trained by another railroad. But once any railroad elects to conduct a basic training program they will be required to submit that program to FRA for approval. That program must meet certain criteria. Frequently referred to as hand-on-training or on-the-job training, the performance skills aspect of the training program is the more difficult to prescribe. FRA proposes to establish criteria concerning the duration and content of the program. FRA's criteria contain gradations that reflect the differences implicit in training a person to operate small trains, at slow speeds, in operationally simple environments and those needed to operate a variety of train consists at many speed ranges over significant variations in terrain. FRA has structured its proposal to focus on the training that would more typically be associated with that afforded to people by large railroads who desire to train individuals to be competent to operate any kind of train under any kind of condition—in essence, the kind of training that it would be appropriate if the railroad's intent was to create a "man for all seasons" at the controls of a locomotive.

(i) *Duration and Content.* FRA proposes that all students receive a minimum of sixty hours of performance skill training. The duration and content criteria that FRA proposes are best illustrated by a discussion of FRA's requirements for training a student who, it is contemplated, will become an

unlimited train service operator. Such a student must receive a minimum of 480 hours of performance skill training, and operate the train for at least 240 of those hours. The trains to which the student is assigned must include whatever variety of equipment the railroad normally operates, equipment which this person can reasonably be expected to encounter as a qualified operator.

FRA has selected this minimum duration for the actual train operation portion of program because of the nature of railroad operations. Regrettably, there are many periods of time, and these periods can be quite lengthy, when a student at the controls of a locomotive will not be doing anything but waiting. By setting this minimum level, FRA experience indicates all students will receive an adequate level of operational experience during which there will be sufficient opportunity for education and skill development concerning train handling.

FRA also proposes to require that students be exposed to a variety of trains and equipment. FRA has observed instances where students were not being exposed to different locomotive types, with their variations in control configurations and performance responses. Likewise, FRA has observed instances where the trains selected for students to operate were very uniform even though such uniform train consists were not the predominant type of consists operated by that railroad. In drafting the proposed training program language FRA is affording railroads considerable latitude is deciding what structure to impose on their training programs by simply establishing performance standards for this aspect of the program. FRA's intent is to require railroads to develop effective programs that should produce highly qualified operators and to avoid structuring the program in ways that satisfy short term convenience goals for administering a training program. It should also be noted that if a railroad segments its operations because it employs a regional or a divisional structure, the railroad would only be required to expose the student to the variations in equipment and train consist peculiar to the segment where the student will eventually be operating once becoming qualified.

FRA's training proposal assumes that the student will be learning the physical characteristics of the territory as well as learning how to translate that data into effective train handling skills. Since there are multiple reasons why that dual education would not necessarily occur, FRA has included a separate provision to address situations where a student learns train handling skills but does not learn about the physical characteristics of a railroad's trackage on which they will be operating. However, FRA does not intend this rule to constrain railroads that have innovative programs including use of video cassette recorders for teaching people about the physical characteristics of their trackage.

(ii) Use of Simulators. After examining many existing training programs, FRA has decided to propose sanctioning the use of train operation simulators as an alternative to actual train handling experience. FRA proposes to permit railroads to conduct up to one half of their train handling skill performance training on simulators and to reduce the total duration of the program significantly. FRA has identified several different types of "simulators" that are currently being used by railroads. In its most basic configuration, the simulator consists of a locomotive control stand equipped with throttle, direction of movement controls and braking levers or switches. The initial enhancement to that basic mock-up configuration occurs when the controls are connected to an elementary airbrake system and the gauges associated with that system. Additional enhancement comes when this mock-up is augmented by the use of film or graphic displays of the rail right-of-way, particularly through the use of video cassette recordings.

True sophistication does not occur until the locomotive control equipment is connected to a computer that translates the physical manipulations of those control devices into data inputs concerning the resulting implications for the operation of a train. Presently there are two types of computer enhanced simulators available and in service. The more rudimentary of these employs a mathematical model to predict the longitudinal dynamic conditions which will result from particular control manipulations. This type of computer enhancement employs stored information on track configuration and equipment characteristics and displays the in-train force levels being predicted on a cathode ray tube (CRT). The most familiar of these simulators are referred to as TDAs which is short for Train Dynamics Analyzer, a popularization of a supplier's brand name identification. The highest level of simulator sophistication occurs when the computer being used for enhancement has greater capacity. These simulators use combined mathematical models to permit effective replication of all of the documented operational characteristics, concerning track profile, locomotive and car performance characteristics including lateral-over-vertical ratio calculations. The computer systems permit real time monitoring of a person's performance, capacity to interrupt the operation of the program for educational purposes, and the ability to both display the effects of control manipulation on a CRT and/or display it in a printed format. They are augmented by motion and sound replication devices and include a visual system for projecting actual films of the track and right-of-way.

FRA believes that the value of the computer enhanced simulators is difficult to overestimate. A few examples to illustrate their value will suffice. In addition to eliminating the wasted time problem inherent in field operations, the simulator permits a railroad to expose students to multiple situations they could encounter in the field but which are too dangerous to create for training purposes. Simulators make it possible to allow students to start heavy tonnage trains on severe grades; to expose them to component failure response techniques to compensate for events such as the loss of dynamic brakes in mountainous terrain; and to expose them to the management of in-train force levels attendant to poor distribution of empty and loaded cars in train consists when operating through undulating terrain.

FRA proposes to permit railroads that have the more rudimentary computer assisted simulators to substitute one hour of simulator time for two hours of field operations time and to permit up to 120 hours of the skill performance interval to occur on such simulators. For the more sophisticated devices FRA proposes to permit railroads to conduct up to 240 hours of their performance skill development program on the simulator. Moreover, FRA proposes to have one hour of simulator time be the equivalent of five hours of field operations.

FRA's proposal concerning the training of future locomotive operators contains a higher level of detail than other portions of this proposal for several reasons. A major reason for FRA's approach is that it lacks the ability to establish, in the near term, an effective universal test for all locomotive operators to measure either the performance skills or the general knowledge levels of prospective operators. In the absence of an ability to effectively test students, through standardized tests, which would allow trainers latitude when educating student operators, FRA has elected to prescribe the details of the education program. If such a universal testing methodology

can be developed, as suggested earlier in this notice, FRA would consider substituting such testing for such a detailed training requirement. The high level of detail being proposed does have some independent benefit however. Although the current training programs of some railroads are very impressive, the overall quality of such programs in the industry is uneven and this proposal would serve to significantly improve the quality of many programs.

(2) Testing Programs. FRA proposes to have each locomotive operator given a performance skill test to measure his or her capacity to safely operate locomotives or trains in accordance with relevant safety practices and procedures. As with knowledge testing, FRA proposes to establish criteria for the tests, including the consequences of failing either (i) initial tests or (ii) subsequent periodic tests.

Of necessity, railroads should and, under this proposal, would be given extensive discretion in designing and administering these tests. However, FRA proposes to establish some criteria concerning: the selection of the person who will conduct the test; the train that must be employed; the duration of the test; and the subject matter to be covered.

FRA proposes to have the performance skills tests administered by a designated person. In order to be designated, such an individual must be a supervisor of the railroad; be fully qualified to operate any train normally operated on that railroad; and have at least five years of experience in such service. FRA will permit that designated person to select the train that will be used for evaluation purposes and the duration of test program. In requiring the use of test train, FRA is not proposing that a railroad operate any train beyond those normally scheduled to be operated. A railroad can comply with this provision by simply having the evaluator and the prospective operator control a train the railroad intended to run in any event.

The primary proposed test constraint is that the test train be of the type that would normally be encountered by the operator being evaluated. FRA is concerned that the discretion being afforded railroads in this context not be abused. For example, it would not be appropriate to limit test train selection in ways that result in the operator being evaluated on a particularly easy or particularly difficult train.

FRA has not specified the duration of the evaluation period. FRA only proposes to require that the duration be sufficient to allow the designated evaluator sufficient time to monitor the operator's skills. Under the wide variety of operational situations that currently exist, FRA anticipates that in rare instances some designated evaluators may need less than one hour to effectively perform this function but in other more typical instances the observation period could last for several hours.

As a consequence of the potential variables that may be encountered by proceeding in this manner, FRA proposes to require that the designated evaluator use a system for identifying relevant data about the test regimen and providing a written explanation or record of their observations and resulting evaluation. FRA has drafted a proposed Appendix as an illustration of the type of system that could be employed.

FRA also proposes to permit railroads to conduct such tests using train operation simulators. Simulator tests would have to meet the same criteria as field tests and would have clear advantages in terms of a railroad's ability to improve the quality of the test program.

FRA proposes to have these performance skill tests administered to each locomotive operator at least once every 36 months and FRA proposes specific consequences for a person who fails these tests. Those consequences of failure distinguish between whether the test constitutes the initial examination of an operator or is a subsequent periodic reexamination of a previously certified operator.

(i) *Consequences of Failing Initial Testing.* Once again, there are at least three different groups of people who can be expected to take an initial examination. As noted earlier, FRA anticipates that this certification rule will be phased into effect by allowing railroads to initially presume people are qualified. The interim presumption of qualification, or grandfathering, concept requires that such grandfathered operators be administered their initial performance skills test within three years of the effective date of this rule. If such a grandfathered operator fails to achieve a passing score when they initially take this test, FRA proposes to immediately bar that person from operating unless operating under the direct supervision of a qualified operator. FRA proposes to have that grandfathered operator retested within a period of not more than fifteen days. If the grandfathered operator fails the second examination, then they can not be permitted to operate a locomotive, unless under direct supervision, until they pass a second reexamination. That reexamination must involve administration of a similar exam, after the lapse of thirty days. A failure of all three tests by a grandfathered operator, will necessitate that the person complete a training program before again attempting to pass this testing.

FRA proposes an analogous chain of consequences for the second and third groups. Members of these groups would be given only one opportunity to retake the exam and any one who fails the initial exam will not be permitted to operate a locomotive or train without direct supervision until successful passage of the test. FRA also proposes to limit the length of time they can function in this supervised manner.

(ii) *Consequences of Failing Periodic Testing.* FRA proposes that a similar chain of consequences apply to individuals who fail subsequent period examinations. The failure of an initial periodic test will start a sixty day probationary period within which the person must successfully pass a retest. During the interval between the first and second examinations a railroad may, but is not required to, permit the person to continue to operate locomotives and trains. Failure of three examinations would also trigger the need to take a retraining program.

(4) Operator Eligibility: Reviewing Prior Safety Conduct

Each person entrusted with operation of a locomotive is being given control of equipment that, if operated unsafely, can produce catastrophic consequences. To help minimize the risk of that occurring, railroads make decisions to exclude from the ranks of prospective locomotive operators individuals who have demonstrated the lack of a conscientious attitude about safely operating locomotives. That pattern of decision making about whether prospective operators evidence a proper regard for their own safety and that of other people constitutes the essence of the "eligibility determination" that FRA is proposing to formalize in this proceeding.

FRA's Proposal Concerning Eligibility. FRA is proposing that all railroads have a formal system for reviewing the prior conduct of prospective locomotive operators that includes clearly delineated procedures by which each railroad would make an evaluation of an individual's fitness before authorizing him or her to operate a locomotive. Although FRA's proposal is merely a continuation of a long standing industry practice, FRA has not been able to identify any clearly articulated or carefully documented approach to this issue which is currently

being followed in the rail industry. In the absence of such an approach for determining a person's "eligibility" to be a locomotive operator, there appears to be a widespread pattern of making adhoc evaluations of prospective operators. Currently when railroads make such evaluations they generally tend to rely on the behavioral evidence available to them as a consequence of the prospective operator's tenure as their employee. In rare instances, railroads also have examined a prospective operator's non-employment related behavior.

Investigation into the cause of the Chase, Maryland accident revealed that the locomotive operator who precipitated the accident had been exhibiting non-employment-related behavior that might have raised concern about the wisdom of allowing that individual to continue operating a locomotive. In this instance, the non-employment related behavior involved multiple occasions on which the individual had operated a motor vehicle in a manner that suggested a certain degree of disregard for both personal and public safety. The railroad that authorized this individual to operate its locomotives apparently was not aware of this off-the-job conduct and had based its assessment of the individual's temperament on a traditional informal employment behavior evaluation system. In an apparent effort to prevent a reoccurrence of such a set of circumstances, section 4 of the RSIA requires that any qualification system which FRA imposes must, as a minimum, compel railroads to consider a prospective operator's motor vehicle driving record prior to issuance of a locomotive operator's certificate.

It is in this context that FRA begins its assessment of the factors which should be addressed in any requirement that railroads make determinations concerning the "eligibility" of individuals who seek to become certified locomotive operators. FRA proposes to continue the best aspects of prior industry practice for evaluating the prospective operator's prior railroad employment behavior and to expand upon prior practice by requiring evaluation of additional information. Discussion of FRA's proposal has been organized to address the following issues: (1) Identification of the types of data that should be considered by a railroad; including the sources for obtaining that data; (2) the mechanics of retrieving data from these sources; (3) segregation of the available data into that which may and may not be considered; (4) with respect to the former, identification of which information creates a mandatory duty to withhold certification and which information creates a discretionary or qualified right to do so including the standards that should govern the exercise of any discretion conferred on the railroad; and (5) the manner in which the information should be considered (due process).

(1) *Types and Sources of Data.* As a general proposition the more information available to decision makers, the better the quality of their decisions. Thus, railroads being obligated to evaluate a person's eligibility to operate a locomotive should have extensive access to existing information concerning that individual. Since total access is neither practical nor appropriate, FRA proposes to have railroads consider information from two types of sources: prior behavior in an employment context and prior behavior in the motor vehicle driver context.

(a) *Behavior in an Employment Context.* Although there are limitations on the availability of precise data, the information at FRA's disposal indicates that it is rare for any railroad to consider as a prospective locomotive operator any person who has not had considerable railroad experience. In some instances, there are even collective bargaining agreements that preclude a railroad from considering the training of any individuals for future locomotive operator assignments until senior train service personnel have been offered the opportunity for such training. One consequence of this is that, historically, railroads rarely have had occasion to examine the non-railroad related employment behavior of operator candidates. That in turn means that there is no available experience with evaluating non-railroad related employment behavior for FRA to rely on in formulating criteria for assessing the significance of information from that source. FRA, therefore, does not propose to require railroads to obtain and evaluate for the purpose of this rule data concerning a prospective operator's prior employment behavior in a non-railroad related employment. The absence of such data should not prove problematic because individuals entering the ranks of locomotive operators from such a background will be under close supervision as a student operator for an extended period.

Absent a sudden and dramatic change in railroad personnel selection practices that have remained stable for well over a century, FRA anticipates that most often prospective operators will have acquired multiple years of experience working for the railroad before becoming operator candidates. FRA does propose to require railroads to evaluate that railroad employment-related behavior of operator candidates. In most cases operator candidates will have acquired their railroad experience working for the very railroad that is contemplating authorizing them to operate a locomotive. In these situations the evaluating railroad will already possess the individual's behavioral record.

In those instances in which a prospective operator has been employed by more than a single railroad, the available information suggests that railroads freely exchange such information between themselves. One consequence of this practice is that all railroads will normally have available a significant amount of information about the railroad employment-related safety behavior of their prospective operators. Thus, FRA does not perceive a need to establish requirements that railroads furnish such data to other railroads. Although such information is freely exchanged, there are some potential problems associated with employment related data that must be considered. The initial problem with railroad employment data stems from the fact that railroads frequently will have information about prospective operators that relates to the person's behavior and attitudes that are not exclusively safety oriented.

The railroad industry has an elaborate system, its disciplinary proceedings, for enforcing adherence to company policy and rules that is intertwined with the resolution of minor disputes under section 3 of the Railway Labor Act (45 U.S.C. 151 et seq.). To some degree, involvement with that discipline system will reflect a prospective operator's employment behavior. As such, that data arguably can be relevant to making a decision about a person's "fitness" to be a certified locomotive operator under this proposed rule. Conversely, the data may be totally irrelevant or only marginally relevant for the purposes of FRA's safety concerns but might be perceived as highly prejudicial by a decision maker under this proposed rule. For example, data collected for productivity reasons or other collateral corporate concerns may shed little or no light on a prospective operator's fitness.

In addition to addressing issues whose safety relevancy may be dubious, the current administration of the discipline system is suspect in the view of some observers. For example, there is at least anecdotal evidence to support the proposition that similar events

receive significantly disparate treatment. Such differences exist both within and between railroads. Those differences include decisions on whether a particular person will or will not be brought before the discipline system for a given course of conduct to a wide range of punishments imposed for the same types of failure to adhere to company rules under similar circumstances. In part, these differences reflect the fact that the disciplinary system is focused on the question of whether a given individual should have his or her employment terminated or constrained. Although the disciplinary system in the railroad industry has multiple purposes beyond identifying unsafe employees, it does contain some relevant information and FRA does not believe that it is appropriate to exclude all data from that source.

The second problem that can occur involves the quality of the information being relied on. FRA proposes to address that issue by assuring that all operator candidates have an opportunity to review and comment on potentially adverse information. This aspect of the FRA's proposal is discussed in greater detail later in this notice.

(b) *Behavior in a Non-Employment Related Context.* Except for the military services and a few corporations that have enforceable policies precluding a person from engaging in unbecoming non-employment related conduct, most institutions do not attempt to regulate such conduct. The reluctance to attempt to proscribe off-duty conduct is a reflection of value placed on individual freedom in this country. Concern over public safety in the transportation field has resulted in a limited incursion on such freedom. The two most visible aspects of that incursion involve inquiry into any history of alcohol or drug abuse and use of motor vehicle driving data to evaluate the wisdom of allowing a person to pilot an airplane, captain a ship or operate a train.

FRA's proposal to consider non-employment-related behavior is confined in this proceeding to requiring railroads to evaluate a candidate's motor vehicle driving record. Most railroads do not now consider a prospective operator's motor vehicle driving record. Although legally empowered to obtain data from many state agencies, very few railroads avail themselves of the opportunity to request and use such motor vehicle data. FRA's proposal, therefore, does not significantly alter the existing situation except to make acquisition of the data mandatory. Since many parties interested in this proceeding will have only a limited familiarity with the sources of data concerning that topic and since the RSIA created new rights of access to certain aspects of the existing data base, FRA is providing an extensive discussion of this topic.

There are basically two sources of data on this subject. The first source for data is the state agency that has issued the person a motor vehicle driver's license (state of licensure). The second source is comprised of the courts and operator licensing agencies for all the states in which the person has actually operated a motor vehicle. There also is a mechanism, the National Driver Register, for identifying most instances in which either of the two primary data sources concluded that the person's conduct merited suspension, revocation, cancellation, or denial of that individual's driver's license.

The National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence, it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State, travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license. Under the provisions of a 1982 amendment to the NDR Act, four pilot states notify NHTSA concerning certain convictions for operation of a motor vehicle even if these convictions do not result in an immediate loss of driving privileges. The type of convictions reported by the pilot states are those for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. The pilot states also report traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information; the name of the person whose license is being affected; and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, color of hair, and social security account number, if a State collects such data.

At the present time there are approximately 155 million licensed motor vehicle drivers in the United States and any given time some 12 million of those licenses will be recently recorded as being revoked or being under suspension. In a typical year some 2 million new licenses will be recorded as having been suspended or revoked.

Access to the NDR data is very limited. At its inception, only state motor vehicle operator licensing agencies and individuals were given a right to request information about whether the NDR contains a listing for any particular person. In recent years it has been permissible for state agencies to furnish NDR data directly to other entities. Dissemination of NDR data has been broadened to permit the Federal Aviation Administration to acquire information about the pilots that it licenses; to allow employers of motor vehicle operators including truck drivers who are subject to the federal safety regulations to receive similar information; and now, under section 4 of the RSIA, to allow railroads that employ railroad locomotive operators subject to FRA jurisdiction to receive such information.

(2) *The Mechanics of Data Retrieval—*

(a) *Employment Records.* The information available to FRA indicates that more than two-thirds of the individuals who would be impacted by this rule are employed by one of a group of some thirty large railroads. Except in rare instances, these people will have been long term employees of that railroad and it is unlikely that they will change employers during the remainder of their railroad careers. Thus, in most instances, the task of evaluating a person's recent railroad employment behavior will not require obtaining data from an outside source. Even for the remaining one-third of the people who'd be effected by this proposal the long term employment relationships with the evaluating railroad will be the rule. For the limited group of prospective operators who have prior railroad experience on a different railroad, FRA proposes to require that the evaluating railroad request the prior employer to

furnish it with information about the prospective operator's service record. To the degree that relevant information concerning the prospective operator's service record becomes available, it must be reduced to writing so that it can be relied on in the discharge of the evaluating railroad's duties under this proposal. FRA proposes to allow either the railroad supplying the data to furnish the information in writing or to have the evaluating railroad reduce data received verbally or electronically to a written format. The limited parameters of the information that FRA considers to be "relevant" information within the various types of data that could be found in a person's service record for the purposes of this rule are discussed later in this notice.

(b) *Motor Vehicle Driving Records.* As noted, there are two sources of data about a person's motor vehicle driving record. The first source is the state of licensure, which can be contacted directly, and the second source consists of the courts and operator licensing agencies for all the states in which the person has actually operated a motor vehicle, which can be initially screened through the use of the NDR.

Access to Data from the State of Licensure. The right of both railroad workers and their employers or prospective employers to have access to a state motor vehicle licensing agency's data concerning such workers' motor vehicle driving records is controlled by state law. Although many states have mechanisms by which employers, such as railroads, can obtain such information, there are some states where privacy restrictions would make such information transfers either difficult or impossible. Since individuals generally have a right to obtain information about their driving record, FRA proposes to place the responsibility on prospective locomotive operators for initiating data retrieval from the state agency that granted them their motor vehicle driver license. If a person has never been issued a license, FRA would only require that the operator candidate so inform the railroad. Conversely, if a person had been issued more than a single license within the last five years, he or she would be obligated to seek the information from all the licensing agencies which issued such a document.

Depending on the procedures adopted by a particular state agency, an individual's right to obtain the information on file with the state agency will either involve the operator candidate sending the state agency a brief letter requesting such information or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. FRA proposes to have the state agency furnish the information directly to the railroad as the operator candidate's employer or prospective employer. To cover those rare instances when an operator candidate has been issued multiple licenses, FRA would require that the operator candidate make more than a single request.

Access to NDR data. For a variety of reasons, the individual state that issues a person a motor vehicle driver license will not necessarily have available all the relevant information about that person's driving record. In particular the issuing state may not have information concerning the person's operation of a motor vehicle beyond the licensure state's boundaries. Although it would be theoretically possible to adopt a system under which it would be necessary to canvass each of the remaining 49 states to attempt to capture all potential information from those state agencies, that approach is neither reasonable or practical. Instead, FRA proposes to focus on convictions that typically cause the non-licensure state agency to act to suspend, revoke, or cancel the prospective locomotive operator's motor vehicle driver's license. Since the information that is available through an NDR check and, where necessary, follow-up inquiries to states shown to have pertinent information should identify all of the relevant actions taken by other states, FRA proposes that each locomotive operator candidate be required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the NDR.

Essentially, only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA would require that individuals seeking certification as a locomotive operator request that an NDR search be performed and that the individual direct that the results be furnished to the railroad. FRA would require that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver's license issued by a state motor vehicle licensing agency that is a "participating state" under the provisions of the NDR Act of 1982. In such instances, the state agency may access the NDR data on behalf of the prospective operator. These state agencies are identified in Appendix C of this proposed regulation.

Requesting NHTSA to Perform the NDR Check. FRA's proposed procedures for requesting NHTSA performance of an NDR check are virtually the same as those currently employed by NHTSA when it receives a request from an individual under the Privacy Act. FRA proposes to have each prospective operator submit a written request to the National Highway Traffic Safety Administration at its offices in Washington, DC. The request must contain as much information as is available concerning the requester including such details as full legal name, nickname or professional name, date of birth and sex, and drivers license number. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad, which must be properly identified. FRA proposes to have the prospective operator sign the request and have that signature notarized.

These proposed requirements are not intended to be onerous but are designed to improve the reliability of the data search. Any person may supply information in addition to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged by the NDR for such checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency to Perform the NDR Check. As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter it should contain the same data being furnished to NHTSA. At present there are only four state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. These are located in the states of North Dakota, Ohio, Virginia and Washington. It is anticipated that the number of states with such capability will increase in the near future and FRA will continue to update the identification of such states by revising the Appendix C to this regulation to identify such state agencies. Since it would be more efficient for a prospective operator to make a single request for both aspects of the information required under this

rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

Both NHTSA and the state agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a probable match and the inquiry state was not responsible for causing that entry, the agency's response normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license. NHTSA's response will include any data submitted by the issuing state in addition to that submitted by other states.

Actions When a Potential NDR Match Occurs. Although the available statistics do not indicate that the response provided after performance of an NDR check for prospective locomotive operators will contain frequent notifications that a probable record match was identified, at least some instances will occur. FRA proposes that if the NDR check results indicate a probable match and the state with the relevant data is the same state which furnished detailed data (because it had issued the person a current driving license), no further action will be required to obtain additional data. If the NDR check results indicate a probable match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA proposes to place responsibility on the railroad to contact the state with the relevant information. FRA would require the railroad to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the railroad may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not propose requiring that a railroad go beyond these modest efforts to obtain the information in the control of such a state agency. FRA proposes to allow the railroad to act upon the pending certification without the data if an individual state agency fails or refuses to supply the records. FRA's proposal though somewhat limited on this point is consistent with the RSIA which pointedly refers to consideration only of "available" information.

If the state licensing agency identified by the NDR check as having relevant information does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the operator candidate are physical description, photographs and handwriting comparisons.

Regardless of how access to the NDR is accomplished, there are only three basic results that can occur: (1) No NDR match will be found; (2) an NDR match will be found, but the listing relates to another person; (3) an NDR match will be found and the listing relates to the prospective operator. In either of the first two instances, the railroad will have a basis for limiting its evaluation of an individual's motor vehicle driving record to that compiled by the state(s) of current licensure in order to comply with this proposal. FRA does not propose to curtail a railroad's authority under state law to seek additional information from state licensing agencies concerning their employees' driving records. If a relevant NDR match does occur, the railroad will have to obtain and consider the data contained on the persons's driving record before permitting the individual to operate a locomotive.

(3) *Segregating the Data Available for Consideration.* Data concerning both the candidate's employment behavior and motor vehicle driving behavior may or may not be appropriate for the task of evaluating a prospective operator's fitness to operate a locomotive. FRA proposes to limit railroads to considering only data that is (a) timely and (b) safety performance related. Within that latter category FRA proposes to distinguish between substance abuse and non-substance-abuse-related behavior.

(a) *Timely Data.* Inquiries concerning a prospective operator's employment history should provide reliable and detailed information. FRA proposes to allow railroads to have access to all data relative to prior railroad service performed by a prospective operator, whether performed for the certifying railroad or for some other railroad. As noted earlier, FRA does not propose to require railroads to seek data concerning a prospective operator's employment related behavior while employed in a non-railroad related job or to seek railroad related employment behavior information for service that was not related to train operations.

Although railroads have considerable freedom in evaluating the significance of the data that becomes available to it under this rule for their employment decisions, FRA proposes to limit railroad discretion when evaluating this information for operator certification purposes because of concern that the older information gets about a person's behavior the more limited usefulness it has when it is being evaluated for the purpose of estimating possible future conduct. To prevent improper reliance on stale information with limited relevance, FRA proposes to preclude railroads from considering, for the purposes of determining whether a certificate should be issued under this rule, all data that is more than five years old. In this way both railroads and individuals will be focused on the kind of near term events that should be probative for evaluating future conduct.

Inquiry of state licensing agencies should provide similarly reliable and detailed information from those jurisdictions, including very recent information from the state of current licensure. Inquiry to the NDR will provide clues regarding states that have on file evidence of convictions for drunk driving, reckless driving, etc. Once the records are checked, the RSIA authorizes looking back 5 years. Neither the statute nor the legislative history clearly indicates whether the interval commences with a legal judgment or the underlying event. The statute eliminates nothing from consideration, not even alcohol/drug related convictions after which rehabilitation is completed although the conference report, like the statute, seems to lean in the direction of requiring that all alcohol/drug convictions must be considered. Moreover, when state motor vehicle licensing agencies furnish data about a person's driving record, it normally is not administratively appropriate or feasible for them to segregate that data for railroad purposes. Instead they tend to furnish the complete record on file with their agency. Although driver record retention practices of the state motor vehicle licensing agencies vary considerably, most states appear to use a minimum retention period in excess of 5 years. In contrast to state retention practices, the NDR data primarily contains information concerning actions

that occurred in the preceding three years. The exception to the three year limitation is for data that was the basis for long term suspensions or revocations.

Faced with these variables in record retention practices, FRA does not propose to limit the data that may be obtained for consideration. Instead, FRA proposes to limit railroads to reliance on information contained in motor vehicle records to state actions or convictions which occurred in the five years preceding the evaluation.

(b) *Safety Performance Related Data.* One of FRA's purposes in proposing these rules is to preclude individuals who have indicated that they lack the proper regard for either their own safety or that of others from operating a locomotive. The data that will become available to railroads under this rule will not always be relevant to the direct achievement of that purpose. Thus, FRA proposes to limit a railroad's reliance on both operator's employment data and motor vehicle driving data to those events that strongly suggest how the prospective operator has previously regarded his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator. In FRA's judgement that would include all instances of alcohol or controlled substance abuse in either the employment context or the operation of a motor vehicle context. It would also include a variety of non-substance abuse incidents that evidence a failure to adequately discharge serious safety responsibilities in either an employment context or in the motor vehicle operation context.

Substance Abuse Related Data. Substance abuse data concerning a prospective operator can arise from events that occurred while the prospective operator was performing service as a railroad employee or while operating a motor vehicle in a setting totally unrelated to employment. FRA believes that both sources of data are focused on the same underlying problem and should be addressed as though they are part of a seamless web.

Regrettably the problem of substance abuse in the railroad industry, at least in terms of alcohol use, is as old as the industry. Efforts to deal with substance abuse began more than a century ago. However the industry programs to combat the substance abuse problem, including the newer aspects of illicit drug use, were not sufficiently effective to preclude FRA regulatory intervention. Thus, this analysis of detected substance abuse by prospective locomotive operators must begin with the perspective created by FRA's adoption of regulations prohibiting alcohol and drug use. (See 49 CFR part 219.)

Since 1986, FRA has prohibited possession and/or use of alcohol and controlled substances while assigned to perform service covered by the Hours of Service Act. In addition, FRA has prohibited reporting for, going on, or remaining on duty while under the influence or impaired by alcohol or a controlled substance. Thus there are few, if any, prospective operators with prior railroad service who will legitimately be able to assert that they lacked notice that such conduct was contrary to law. From that perspective, there is no basis to preclude a railroad from using any timely substance abuse information that was acquired in connection with an individual's performance of covered service. A possible exception to this involves non-medical use of controlled substances on a railroad whose policy did not, until recently, clearly prohibit such conduct. However, in most cases such non-medical use involved illicit substances. Although it is possible that a future locomotive operator candidate may appear who had been detected as having used, possessed, or been under the influence of drugs or alcohol while performing service to which FRA's regulations do not apply (and, therefore, arguably beyond the realm of safety related behavior), FRA proposes to allow a railroad to consider such data under this rule because of the pervasive corporate prohibitions against such conduct for all railroad employees and its relevance to the prospective operator's potential for substance abuse in safety-sensitive service.

FRA also does not propose to draw distinctions about this data based on the events that gave rise to acquisition of the data. Thus, the basis for the data could be compliance with the portions of FRA's rules requiring post-accident testing and random testing or the provisions that authorize reasonable cause testing under circumstances in which an individual's conduct would provide a legitimate basis to be curious about the possibility that the person's actions were the result of substance use or abuse.

FRA's rules for controlling alcohol and drug use by railroad workers also impose sanctions for those who refuse to submit to either post-accident testing or to a test administered on a random selection basis. Thus, FRA proposes to allow railroads to consider such refusals when conducting evaluations of candidates for the purpose of this rule.

FRA proposes to accord similar regulatory treatment to data concerning operation of a motor vehicle while impaired due to consumption of alcohol or a controlled substance. Convictions for driving under the influence, administrative actions in lieu of conviction and refusal to submit to a law enforcement officer's request to undergo testing will all be available to the railroad for evaluation under this rule. In electing to make available state actions that are less than "convictions" FRA is proposing to ensure that railroads are aware of those situations in which either a court asserts or retains continuing jurisdiction over a person but does not enter a judgement of conviction. Some courts use a procedure whereby a person is on probation pending judgement or is subject to deferred adjudication in order to enable a person to participate in a required rehabilitation program or community service program and thereby avoid a permanent record of conviction. Because of the significance that can attach to such information, FRA proposes to allow railroads to consider information involving the use of such procedures. FRA's proposal would also permit railroads to consider data involving a variety of state administrative responses to unacceptable substance abuse related driving behavior. For instance, some states have implied consent provisions which result in automatic or mandatory cancellations, revocations, or suspensions that are triggered by less than an alcohol or drug related motor vehicle conviction. For example, refusal to submit law enforcement officer's requested test to determine blood alcohol content automatically results in administrative suspension or revocation in many states.

Although some may question the propriety using motor vehicle driving performance for the purpose of evaluating a candidate's fitness to operate a locomotive, there can be no argument that such candidates were fully aware that such conduct was legally proscribed. Prohibitions against operating a motor vehicle while under the influence and the risk of loss of driving privileges when refusing a law enforcement official's request for chemical tests have long been a matter of state law. By acting in contravention of such laws, operator candidates have provided some insight into their attitudes concerning both their personal and public safety.

Non Substance Abuse Related Data. FRA has also identified a number of events, unrelated to substance abuse, that strongly suggest how the

prospective operator regards his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator. The first group of these events involve the conduct a prospective operator might have engaged in while employed by a railroad either as a locomotive operator or a member of a train crew. The second group of events involve conduct by a prospective operator while engaged in operating a motor vehicle.

FRA's purpose in proposing these rules is to preclude locomotives from being operated by individuals who have indicated that they lack the proper regard for either their own safety or that of others. Thus, many of the actions or inactions that would be relevant to a railroad in determining whether to promote a person or continue a person's employment are not relevant to the question of whether that person should be considered qualified for the purposes of this rule. Since a person's service record with a railroad might include a variety of data, such as an incident of insubordination, which arguably might not be pertinent for the limited purposes of this rule, FRA proposes to limit a railroad's reliance on operator employment data to those events that involve train operations. In FRA's judgement, such actions strongly suggest how the prospective operator regards his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator.

Employment Data. Except for a handful of people (individuals without train operation work history in the five years prior to the inquiry), those who will initially seek certification under this rule will be providing each railroad with an opportunity to evaluate the record that the prospective operator has compiled while operating a train during the preceding five years. In that interval these locomotive operator candidates will normally have had extensive experience with compliance with railroad operating rules. FRA has identified four types of events, prohibited by carrier operating rules or Federal regulations, that clearly reflect a serious failure to be attentive to operational safety concerns. All of these are the direct responsibility of locomotive operators. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; (3) failing to comply with a mandatory directive and entering a segment of track without authority; and (4) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR part 218. FRA believes that the candidates should be held accountable for instances in which they failed in the past to comport with carrier rules that required such conduct. FRA, therefore, proposes to allow railroads to consider data concerning such events.

A group of people (future student operators, operators trained in the last few years, or experienced operators who have encountered a break in locomotive service but have been working in other train crew capacities) will present railroads with a slightly different service record from that just discussed. Since all personnel performing train service operations will normally have extensive experience with compliance with railroad operating rules, FRA has considered the degree to which railroads should rely on incidents of failure to comply with carrier or federal safety rules while the person was performing in that capacity.

FRA has identified five types of events, prohibited by carrier operating rules or Federal regulations, that clearly reflect a serious failure to be attentive to operational safety concerns, if the individual was directly and personally responsible for compliance with that rule. These are: (1) Noncompliance with a train order, track warrant, timetable, special instruction or other directive with respect to the movement of a train that involves (a) operating a locomotive or train at excessive speed; (b) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (c) failing to comply with a mandatory directive and entering a segment of track without authority; (2) failure to protect train as required by a carrier rule that is consistent with § 218.37; (3) alignment of a switch in violation of a railroad operating rule or operation of a switch under a train; (4) failure to secure a handbrake or a sufficient number of handbrakes; and (5) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR Part 218. FRA believes that the candidates should be held accountable for instances in which they were directly and personally responsible for compliance and failed to comport with carrier rules or federal safety rules that required particular safety conduct. Thus, FRA proposes to permit railroads to consider data concerning such events when evaluating operator candidates.

Motor Vehicle Data. FRA has reached a similar conclusion with regard to motor vehicle driver data. There are multiple reasons that could prompt a state licensing agency to suspend, cancel or revoke a person's driver's license, for example, repeated failure to pay parking tickets or a series of minor offenses relating to the condition of a vehicle. Although the state agency would have "cause" to revoke or deny a motor vehicle driver's license for such conduct, those reasons clearly are not necessarily relevant to a railroad's evaluation.

FRA believes that, consistent with the intent of the RSIA, this regulation should be designed to identify both significant individual events and patterns of conduct that would be indicative that a particular individual presents an unacceptable risk of becoming an unsafe train operator. To accomplish that, FRA proposes to allow railroads to have access to the same data that informed the state agency decision but to limit railroads to reliance on only those types of events which reflect a significant disregard for safety or raise serious questions about a person's ability to control a vehicle.

Initially, FRA considered merely identifying those offenses and allowing railroads to have complete discretion about what responsive action should be taken. FRA now believes that, if left in that posture, the rule would not provide adequate guidance to railroads. Some railroads might feel compelled to disqualify good engineers in order to comply with their understanding of the agency's intent; others might resist taking any action even where the offenses provided a crystal clear pattern of bad conduct; and a final group might use the slightest infraction to reduce their seniority rosters.

FRA believes that the process which has evolved in the motor vehicle driver licensing context, grouping offenses into categories bearing certain per-offense weights, is a good model to follow for determining the consequences of poor driving performance. Moreover, FRA believes railroad employment data should be added into the same point system to provide an overall basis for determining a person's eligibility. In essence, FRA contemplates that a railroad locomotive operator evaluation system could be devised under which a high negative score could result in denial of certification. A lower but not insubstantial score might warrant a certification limited to a lower class of service or perhaps conditioned on more frequent supervisory oversight.

Developing an effective system requires a considerable amount of time and effort. Obviously, it is easy to make such a system very complicated in only a short time. In view of the statutory

impetus for rapid regulatory action, FRA is not prepared to present a complete model for locomotive operator decisions. Instead, FRA solicits the views of commenters on the wisdom of such an approach and would welcome efforts to help devise such a more complete system from any who favor this approach. As an interim measure, FRA is proposing in this NPRM to employ a rudimentary point system to assist in evaluating the relative consequences that should flow from data involving the poor safety performance of locomotive operators while at the controls of a motor vehicle.

In FRA's judgement, the RSIA contemplates that the commission of serious traffic offenses should be considered as indicia of a basic disregard for public safety or inability to control a vehicle. Since there is no data that permits FRA to make direct correlations between a poor driving record while controlling a motor vehicle and unsafe behavior at the controls of a locomotive, FRA proposes to take a cautious approach to reliance on motor vehicle driving records as a basis for denying a person certification as a locomotive operator. (See the May 18, 1989 edition of the **Federal Register** (54 FR 21581) for a discussion of the correlation between pilots with poor motor vehicle driving records and pilots whose poor piloting performance cause aviation accidents.) Therefore, FRA proposes initially to restrict railroads to consideration only of serious traffic offenses involving a moving vehicle. These would include excessive speed (exceeding the posted limit by more than 15 miles-per-hour), reckless driving, citation for a moving violation in connection with a fatal accident, and driving with a revoked or suspended license. These offenses in the view of Congress and FRA are so egregious that common sense indicates their probable correlation to safe railroad performance. In short, these are the types of events that serve as a basis for denial of a commercial truck driver license (see 49 U.S.C. App 2707), a setting where there is a more demonstrable behavioral correlation. FRA's list of significant events is slightly different from those enumerated in § 205(a)(3) of the National Drivers Register Act because FRA has opted to provide more precision in identifying the types of events addressed by subparagraph (B) of that section.

FRA recognizes that its current proposal will prevent railroads from considering a wide variety of traffic offenses including minor traffic offenses ranging from a failure to pay a toll or parking fee to impeding traffic by driving too slowly. Although FRA has excluded from consideration a number of types of traffic offenses that are not necessarily minor offenses, FRA proposes to exclude them because they are difficult to evaluate in the railroad operations context. For example, running a red light and driving on the wrong side of the road can be very serious events, but empowering railroads to make decisions about a person's fitness to operate a train on the basis of such conduct is not warranted at this point in time. Until FRA has gained more experience concerning the relationship between an operator's behavior at the controls of both motor vehicles and trains, it does not appear to be appropriate to attempt to fully resolve this issue. FRA contemplates initiating a second proceeding to focus on this issue and others surrounding improper conduct by locomotive operators after it has gained more experience in this area.

Although FRA does not believe that it is possible or appropriate to tackle the all aspects of motor vehicle driving data during this initial rulemaking, FRA has concluded that it is important that railroads have access to some data and that limits be placed on the railroad's use of the data, in the certification context, until clearer decisional standards can be provided. There is no way, of course, to bar railroads from making more general use of the available data, (e.g., proceeding under their own rules regarding conduct unbecoming an employee) but the matter of determining the bases on which a railroad may withhold a certification is ultimately FRA's responsibility.

(4) *Consequences of Admissible Data.* Having segregated out the data that may not be considered by railroads, this portion of the discussion focuses on FRA's proposals for the consequences of "admissible" data would be under this rule. FRA has subdivided its discussion of this topic to address (a) the consequences of substance abuse data, (b) the consequences of non-substance abuse safety performance data, and (c) the consequences when there is a mixture of the two different types of information.

Comprehension of the specific consequences being proposed for specific types of adverse data requires an understanding of the framework within which all such decisions would be made. As explained elsewhere in greater detail, FRA proceeds from the perspective that this rule should set the minimum qualifications that an individual must have to be a locomotive operator. Railroads would be free to have more rigorous standards if they so elect. As long as a person meets or exceeds FRA criteria, a railroad would be obligated to certify that individual. Although obligated to issue the certification, the railroad retains discretion, under this rule, whether or not to authorize that person to operate a locomotive. If an individual marginally meets FRA's criteria, the railroad would be given limited discretion to conditionally certify that person. Failure to meet the criteria preclude a railroad from certifying that individual either temporarily or, under certain circumstances, permanently.

Since there are both different types of data being provided by different sources and since there are unresolved concerns over both the relative value and significance that should be attached to motor vehicle driver data, FRA proposes to employ a basic point system to assist in evaluating all poor safety performance data. FRA is proposing a system under which all of the types of events identified as admissible would be given a specific point value. Any candidate who had acquired less than 6 points would be considered "eligible for certification" for the purposes of this rule. Railroads would not have discretion to alter the point value for particular incidents nor would they have the discretion to consider such a candidate "ineligible" under this rule. If a candidate had acquired 6 points the railroad would have the discretion to deem that person "eligible" provided that certain conditions were met. If a candidate had acquired more than six points, the railroad would not have the discretion to certify that person as "eligible" until 5 years had elapsed after the most recent incident being considered. Any person who had a second series of incidents so that his or her total point accumulation again exceeded 6 points would become "ineligible for certification" for the rest of his or her life.

(a) *Consequences of Substance Abuse Data.* As indicated earlier, FRA does not perceive a need to accord differing regulatory treatment to particular types of substance abuse data simply based on whether that data surfaced by virtue of the candidate's employment history or his or her motor vehicle driving history. In both settings there are clear prohibitions against engaging in such conduct and there are adequate safeguards to assure that there is reliable data available about that violation which will be considered by the railroad. Thus, as it must, FRA's

analysis of the consequences of detected substance abuse by prospective locomotive operators begins with the perspective created by its adoption of regulations prohibiting on-the-job alcohol and drug use. In selecting this starting point, FRA is not unmindful of the fact that FRA's random drug testing rule does extend the prohibition to off-duty use of illegal drugs and other non-medical use of controlled substances.

FRA's initial rules to control alcohol and drug use by railroad workers did not prescribe the consequences that would flow from an individual's failure to comply with these prohibitions. With the exception of imposing a 9-month disqualification for a refusal to submit to a post-accident test, FRA gave the railroad discretion to determine the consequences when noncompliance was detected. FRA has recently affirmed that basic approach for refusal to submit to a random test. More significantly for the purposes of this rule, FRA also imposed a suspension of unspecified duration for instances in which a random test provided positive results of controlled substance use.

The perspective created by FRA's regulations on employment related substance abuse are fairly consistent with the significance to be attached to analogous motor vehicle driving data under the RSIA. The RSIA and the conference report almost imply a Congressional intent that FRA require withholding of certification if there has been an alcohol/drug offense with no rehabilitation. The statute however does not say this; instead it uses the permissive "may" at the critical point and empowers FRA to determine the outcome in this rule. The statute permits virtually any outcome other than denial of certification to a person who has "completed rehabilitation," and even then the certification may be conditioned.

In order to assist in understanding the statutory framework within which FRA is developed this proposal, FRA has included a summary reflecting the series of three specific requirements contained in section 4 of the RSIA. These provisions read as follows:

(1) In paragraph (1)(2)(D), section 4 provides that:

> * * * [The program] shall, except as provided in paragraph (4), require the consideration of, to the extent information is available, of the motor vehicle driving record of each individual seeking licensing or certification under such program, (including a list of specific offenses) and may, based on such driving record, require disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe;

(2) in paragraph (l)(4)(A), it provides that:

> * * * In establishing the program under this subsection, the Secretary may not waive the application of requirements established under section (2)(D) to an individual or class of individuals with a conviction or, cancellation, revocation, or suspension described in paragraph (6) (A) or (B) who have not successfully completed a rehabilitation program established by a railroad or approved by the Secretary.

and (3) in paragraph (l)(6), it provides that:

> * * * No individual shall be denied a license or certification under the requirements established under paragraph (2)(D) because of—(A) a conviction for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or (B) the cancellation, revocation, or suspension of the motor vehicle operator's license of such individual on the basis of operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, if such individual subsequent to such conviction, cancellation, revocation, or suspension has successfully completed rehabilitation program established by a railroad or approved by the Secretary.

FRA interprets section 4 of the RSIA as requiring consideration of all driving history and prohibiting blanket waiver of those without rehabilitation as well as denial of certification for those who have successfully completed rehabilitation. Within these constraints, FRA is faced with determining the response that should occur under many different factual settings. For instance, what response would be appropriate if any alcohol/drug offense is identified? Should FRA's response differentiate between offenses that occurred while the person was on duty from those that occurred while off duty? Equitable results vary widely, of course, depending on the circumstances. On the one hand, a conviction for driving while impaired can be had in some states with a blood alcohol concentration (BAC) of .06%, a level not difficult to achieve if one begins drinking on an empty stomach. It would by no means establish, by itself, a need for formal, structured treatment (although many states would require participation in an alcohol education program). Such a conviction might suggest a disregard for safety, but the indication would not be strong if this were an isolated event that occurred three or four years prior. On the other hand, repeated driving while intoxicated (DWI) offenses at BAC's in excess of .10%, or a single DWI with a BAC above .20%, would indicate a clear need to evaluate the person for chemical dependency. But the single case at .20% might not indicate a disposition to unsafe conduct so much as loss of control.

FRA proceeds from the perspective that the challenge is to erect a structure for utilizing alcohol/drug information from either railroad employment or motor vehicle records that is preventive rather than punitive and predictable rather than capricious. However, it is important that the structure of this rule fit well into the overall pattern FRA has established for control of alcohol/drug use in railroad operations.

Drug Abuse Model. FRA proposes to follow a path initially blazed when considering our drug use policy. Beginning October 2, 1989 any non-medical use of controlled substances will be barred by FRA rule. Thus, a subsequent conviction for driving while under the influence of a controlled substance might be positive proof of a violation of our drug rule. Even a prior violation might be cause for concern that the drug abuse habit is continuing. Though currently FRA specifies minimum consequences only with respect to drug use detected through random testing, there is reason to believe that will change as FRA conforms the balance of the rule to the random testing provisions. The random testing rule does not bar more stringent adverse action consistent with any pertinent employment contract, but it does provide that an employee determined to have made unauthorized use of a controlled substance may not be returned to service unless: (a) the individual has been evaluated for any treatable substance abuse disorder; (b) any necessary treatment has been successfully completed, as determined by the employee assistance program (EAP) counselor; (c) a return-to-work test is negative; and (d) the individual is subject to aftercare and follow-up testing as determined necessary for a period of up to 60 months.

With respect to the drug abuser identified through motor vehicle records, FRA believes that this is almost precisely the basic structure to be employed. Even an employee recently hired who was determined to have been convicted two or three years before should be sent to the counselor for evaluation. If the EAP counselor, medical review officer (MRO), or other appropriate officer determined that there was no current treatable disorder (based on a medical examination, interview, review of employment history, etc.), it would make no sense to require the person to go receive formal, structured treatment. Chronic casual drug use (e.g., marijuana use two or three times a week with nothing else)

might most profitably be treated on an outpatient basis. If, on the other hand, evaluation suggested a chemical dependency, then the individual could be required to receive appropriate inpatient treatment. This is a judgment to be made by the medical or substance abuse professional. If a dispute arises regarding the judgment, it should be resolved by medical arbitration which is available under most collective bargaining arrangements.

Alcohol Model. Alcohol, which FRA anticipates will greatly preponderate in the motor vehicle data bases presents a more difficult problem. Drug abusers can be told to stop abusing drugs, but one cannot tell a citizen to stop drinking without good reason. It is, therefore, necessary to focus on two separate problems. The first is that in the alcohol area, like the drug realm, FRA is proposing to proceed without adopting overall medical standards. However in this instance, the only standard available is freedom from a current clinical diagnosis of uncontrolled alcoholism. This standard is already in place for motor carrier drivers and aviators. It makes eminent sense that it should apply to locomotive operators. Although this approach may create some inconsistencies, the implicit creation of a medical standard as part of the eligibility criteria is the only way to put the information derived from motor vehicle records in an appropriate context with respect to follow-up of those permitted to continue in service after any required treatment. The Congressional requirement that "rehabilitation" be deemed to expunge prior alcohol offenses indicates that this is the frame of reference Congress intended. However, since many DWI/DUI offenders are not alcoholics, the Congressional framework requires elaboration. As noted above, it would make little sense to require inpatient treatment of the social drinker who only occasionally imbibes to excess; indeed, no responsible treatment center would accept such a person for inpatient treatment. On the other hand, alcohol education programs attempted by the states for DWI offenders have had little effect; and there is no empirical evidence to indicate that counseling models directed at controlled drinking (as opposed to abstinence) would be much more effective. Complicating the matter further is the fact that drinking episodes may be caused by underlying problems, only some of which may be treatable.

FRA proposes to posit a framework for decision making that builds on the framework for drugs. FRA proposes that any prospective operator with an alcohol-related conviction or suspension/revocation (including a suspension for refusal of a chemical test) must be evaluated for any treatable substance abuse disorder. If the operator candidate is diagnosed as an alcoholic, then normal primary treatment should be completed as deemed necessary, followed by return-to-service drug/alcohol urine testing, aftercare to maintain abstinence, and follow-up drug/alcohol urine testing. Those diagnosed as alcoholics would be tested according to the judgment of the railroad for up to five years using a urine alcohol/drug test or other effective method (such as a breath test), the same maximum prescribed for drug abuse follow-up. For the employee who successfully completes primary treatment and is certified, subject to follow-up, the "points" associated with discovery of the alcoholism would not be considered for a certification decision. If the operator candidate is not diagnosed as an alcoholic, then primary "rehabilitation" may be limited to counseling regarding abuse of alcohol, but the employee could be required to participate in a program of education or training with respect to abuse of alcohol or drugs (*see* e.g., § 219.405(e)).

FRA believes that the key to dealing with the alcohol issue is identifying the nature of the problem (or at least categorizing the problem), since it dictates whether future abstinence may be required. As FRA reads the statute, it has authority to issue a rule that makes possible a rational response to disparate circumstances.

The more difficult problem is how the rule should address the follow-up for the non-alcoholic. If the individual is evaluated as not requiring formal treatment, but evidences a streak of recklessness that may include later job-related drinking, how does FRA or the railroad limit that potential? FRA commences from the position that social and legal norms will not allow us to require total abstinence. However, it appears that individuals who engage in such conduct should be held accountable under this rule for their poor discharge of safety performance duties. Thus, FRA proposes to include such incidents for as part of overall safety performance evaluations point system.

FRA will separately propose amendments to the alcohol/drug regulations (49 CFR part 219) that will provide for followup testing of employees who violate prohibitions with respect to alcohol/drug use, possession or impairment, building on the follow-up requirements for random testing published last November (53 FR 47103, Nov. 21, 1988; *see* § 219.605(e)). Comment is requested in this docket as to whether, as a condition of certification, similar follow-up should be required for the non-alcoholic who has refused a chemical test on the highway or who has been convicted of an offense involving driving while intoxicated or under the influence of a controlled substance. It will be noted that unauthorized use of controlled substances will be prohibited at any time effective October 2, 1989; thus, reliably documented detection of such conduct in any context may indicate the need for responsive action by the railroad.

Although additional railroad counter measures would be beyond the scope of the FRA program for qualifying locomotive operators, nothing in this proposal would impair the right of a railroad to condition the operator's service (though not the granting of the FRA certificate) on submission to an appropriate regimen of unannounced testing for an appropriate period of time as a matter of company policy. The only appropriate tests would be on-the-job tests of blood or breath or a "two-sample" urine testing procedure, since urine from a single sample may contain residues of alcohol from periods when the employee was at liberty to drink. Blood or urine testing is bound to be expensive and objectionable as a routine practice, so breath testing is the only likely alternative. A large railroad with a logical breath testing program could readily provide for periodic, unannounced testing of locomotive operators with DWI/DUI convictions within a certain time period in the past. For instance, a single conviction in the 5-year period could warrant a two-year window of testing (from date of violation).

Transition to a New System. At the time this regulation goes into effect, many prospective operators will have already made much relevant history. Some will have had DWI's and received treatment from the EAP. Some will have had DWI's and received treatment from outside sources without the knowledge of the railroad or its EAP. Others will have had DWI's followed by maturation or self-enforced abstinence, with the consequence that their recent service record and motor vehicle driving record are excellent. Still others will have continuing substance abuse problems. It is inevitable that many currently serving locomotive operators who will wish to be Federally qualified will step forward under FRA's alcohol/drug rule and refer

themselves voluntarily for "rehabilitation" in order to find the shelter provided by the statute with respect to past behavior. It is important that FRA let the substance abuse or medical professionals evaluate the individual's problem and either prescribe a course of counseling and/or treatment or pronounce therapy already received as adequate.

To accomplish its policy goals FRA proposes to utilize the EAP counselors in a two step process under this rule. FRA proposes to have the counselors receive all of the available and "admissible" data concerning substance abuse. Employing traditional professional standards for making such evaluations, the counselor would review data, including interviewing the candidate or taking other actions deemed appropriate in particular circumstances. If, after that review of these incidents, the counselor concludes that the events were followed by an appropriate course of counseling or treatment these incidents would not be given weights for the point system. The counselor would then evaluate whether the candidate is currently affected by a psychological or physical dependence on one or more controlled substances or by any other identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation. If the counselor concludes that the candidate is currently affected or dependent, the counselor would respond in accordance with existing provisions of FRA's alcohol and drug rules concerning the handling of voluntary referrals. Since FRA believes that it is important that FRA do whatever is reasonable to encourage subsequent follow-up, FRA proposes to permit conditioning of the certification on participation in aftercare and chemical testing, as appropriate, but only to the degree such actions are provided for in part 219.

If a counselor concludes that the counseling or treatment response to the prior incident was unsuccessful and the candidate is not currently affected or dependent, FRA proposes to assign a value of three points to those alcohol and drug related incidents and to consider such points under its evaluation system. If the person had only a single incident in the five year interval being considered, the railroad would not have a basis to deem that person unqualified under this rule. If a candidate had two incidents in a five year interval, a railroad would have the discretion to consider that person qualified under this rule but in order to certify that individual as a locomotive servicing or any class of train service operator the candidate must successfully complete a training program. Under FRA's basic system, if a candidate has experienced three incidents, the railroad would not be authorized to certify that person until 5 years had elapsed after the most recent incident. FRA notes, however, that with respect to past conduct involving more than one event, some "treatable" disorder is likely to be found by the EAP counselor and allowing such events to be sheltered may be particularly appropriate, given the fact that past circumstances may have provided little impetus to voluntarily seek employment counseling. Further, this approach will mitigate the apparent harshness of having to entirely disqualify an operator candidate based on actions that did not carry this adverse sanction under Federal law at the time they occurred. Under FRA's approach, operator candidates would bear the burden of convincing the counselor that they have progressed sufficiently along the rehabilitation path and are not currently dependent. FRA would not attempt to disturb the discretion of the counselor making such evaluations.

To some limited degree imposition of consequences for individuals who are not dependent or do not have an identifiable medical disorder can be viewed as running counter to FRA's preferred method of treating substance abuse incidents as manifestations of a substance abuse disorder. Yet there is a need to establish clearly defined limits for operator conduct and to hold substance abusers accountable when they exceed those limits. FRA welcomes comments on ways to more effectively balance these competing interests in the context of this rule.

One possible alternative would be to have the EAP counselor play a different role from that outlined above. Under such an alternative the counselor would receive all of the data and be permitted to clean the slate of everyone with the "points" being banked for possible later use, if appropriate. One advantage to such an alternative is that it avoids a risk inherent in FRA's proposed solution. That risk is that everyone will be declared "treatable" unless there is some extraneous reason for not doing that. It can also be argued that the alternative precludes interpretation of the intent of the preferred approach as sending a message to alcoholics and others that safety related misconduct will be excused because of addiction.

Mandatory Rehabilitation and Reinstatement. In developing its policies with respect to misuse of alcohol and drugs by safety-sensitive railroad employees, FRA has consistently avoided imposition of any requirement that an employer provide the opportunity for company-supervised rehabilitation and subsequent right to reinstatement, where the employee has failed to take advantage of the right of voluntary referral (49 CFR part 219, subpart E) and is, instead, detected through the efforts of management. The reason for this policy position is that means of detecting violations will not deter prohibited conduct if the employee believes that the consequence of waiting to be "caught" is the same as seeking help.

The issue of locomotive operator certification does not present a different case, since the RSIA does not mandate an opportunity for rehabilitation (though it does provide for certain consequences where rehabilitation is, in fact, successfully completed). But it does suggest more complicated scenarios in which the issue of an opportunity for rehabilitation and reinstatement will arise. The following discussion examines common examples, but others can be posited.

Motor vehicle offenses prior to applying for certification; current employee. In the discussion above, we have indicated that persons already employed by the railroad in positions subject to Part 219 will be able to secure the opportunity for rehabilitation by seeking the assistance of the EAP counselor prior to applying for an FRA certificate. This will provide protective shelter in relation both to the certification process and other employment-related consequences that might otherwise obtain, assuming that the employee is truly prepared to deal successfully with the substance abuse disorder. This is, of course, a shelter that would not be available to an employee who had previously received assistance under the FRA rule or similar carrier policy.

Motor vehicle offense after certification. Similarly, an employee who experiences an off-the-job offense after being certified will be the first to know and can refer under the existing policy. A question arises as to whether the right would be available after the conviction had been reported to the railroad. *See* 49 CFR 219.401(e)(2). It would appear that Federal rules should work together to encourage the earliest possible referral, since a motor vehicle incident may indicate a rapidly deteriorating personal situation that should be dealt with as soon as possible. No particular reason appears why the opportunity for rehabilitation

(with conditional right of reinstatement) should be available after the railroad discovers the unsafe conduct through a motor vehicle records check. FRA solicits comment as to whether the proposed rule, Part 219, or both, should be amended to address this issue.

Positive on-the-job test. Clearly, if an alcohol/drug violation is detected through a supervisory observation or chemical test on the job, the railroad is currently under no obligation to offer an opportunity for rehabilitation and reinstatement. Nothing in this proposal would change that outcome. However, if as a matter of collectively bargained right or management policy the violator is allowed to retain an employment relationship while undergoing rehabilitation, then the rules described above would operate.

FRA solicits comments with respect to any additional problems that may be encountered in integrating the policies of FRA's alcohol/drug rule and the rules proposed in this notice.

(b) *Consequences of Non-Substance Abuse Safety Performance Related Conduct.* Quite apart from the question of the consequences of substance abuse data, FRA anticipates that railroads will be confronted with data concerning a prospective operator's poor performance in safety related situations in either a railroad employment context or in a non-employment context of operating a motor vehicle. Both prior railroad service records and motor vehicle records involve multiple issues regarding what the certification consequences should be when various types of evidence are discovered.

Unsafe Train Operation Data. As noted earlier, FRA proposes to hold individuals responsible under this rule for their personal failure to follow one or more of a limited set of established federal or industry standards concerning the safe operation of trains. FRA is taking that approach because of the potential safety risks incurred when the following types of rules are not adhered to: (i) Noncompliance with a train order, track warrant, timetable, special instruction or other direction with respect to the movement of a train that involves (a) operating a locomotive or train at excessive speed; (b) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; or (c) failing to comply with a mandatory directive and entering a segment of track without authority; (ii) failure to protect train as required by a carrier rule that is consistent with § 218.37; (iii) alignment of a switch in violation of a railroad operating rule or operation of a switch under a train; (iv) failure to secure a handbrake or a sufficient number of handbrakes; and (v) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR Part 218.

In devising its response to this type of poor safety conduct, FRA has remained sensitive to the fact that most carrier operating rules place a train's conductor in charge of the crew and make him or her responsible for the actions of all the crew. Thus, FRA has formulated its program to hold individuals responsible only for that aspect of compliance with the requirements that was the direct and personal responsibility of the individual who is now a candidate to be locomotive operator.

FRA proposes the following structured response to such poor railroad train operation conduct: (1) A candidate who has been adjudged as having been directly and personally responsible for committing three or more of these violations of carrier or federal rules in the last five years may not be certified until five years have elapsed since occurrence of the last event in that sequence; (2) if that barred operator does return to service and either accumulates three more such incidents or is disqualified under an FRA proceeding conducted under part 209, no railroad may ever certify that individual under this rule; and (3) a person adjudged of having committed two of these violations may not be certified unless that individual undergoes a retraining program equal to the operational training of student operators.

Unsafe Motor Vehicle Operation Data. As noted, the commission of serious traffic offenses will be considered as indicia of a potentially basic disregard for public safety under this proposed rule and FRA proposes to restrict railroads to consideration of the following types of offenses: (i) Excessive speed (exceeding the posted limit by more than 15 miles-per-hour), (ii) reckless driving, (iii) citation for a moving violation in connection with a fatal accident, and (iv) driving with a revoked or suspended license. Because of the limits on its ability to correlate safety performance in a motor vehicle with safety performance in a locomotive cab, FRA proposes to employ a conservative approach to setting the threshold at which such events will provide a basis for precluding an individual from certification. Thus, FRA proposes to assign a value of two points to such incidents. If the candidate has been accumulating a poor driving record in the last 5 years FRA's proposal would preclude from certification, as either student or full fledged operator, only individuals who have been adjudged to have committed four or more serious motor vehicle driving offenses. Such individuals would have acquired more points than permitted under FRA's six point ceiling for qualifying. If an individual has committed more than one but less than four such offenses, a railroad would be authorized to temporarily certify that person. That temporary certification would be issued on the condition that such certification would terminate if the person is involved in any one of the types of poor safety performance incidents identified in this regulation. Those with only a single offense could not be deemed unqualified on the basis of motor vehicle driving history.

(c) *Consequences of Multiple Types of Data.* In reviewing data concerning an operator candidate, it is possible that a railroad will encounter instances where a candidate's records indicate multiple instances of poor safety performance but no accumulation of any single type of incidents. In those situations FRA proposes to have the railroads accumulate the total number of points attributable to any admissible incidents. If that cumulative total exceeds 6 points, the person would be deemed unqualified until the passage of five years after the most recent incident. If the person has accumulated 6 points, the railroad could not certify that individual until the person had attended a retraining program equal to the operational training of student operators. If the cumulative total is less than six points the railroad could not—based on prior conduct—deem the person unqualified under this rule.

Using this aspect of the proposed system, a person with either of the following kinds of marginal safety conduct could be deemed qualified if the relevant conditions are complied with: one substance abuse incident and one railroad performance incident or three motor vehicle driving incidents. A person with one incident from each category would not be eligible to qualify until the lapse of the five year interval from the most recent incident.

FRA seeks commenter response not only to the proposed adoption of an integrated system for evaluating prior conduct but to the wisdom of employing an alternate approach under which driving history and railroad employment history would have separate and distinct point systems. Under this alternate approach, a prospective operator's driving history (including any alcohol or drug related incidents) would have particular point values and as long as the total number of points remained below a threshold value, the operator

would be eligible for certification. A similar system would exist for poor railroad safety performance incidents. The only intermingling of the two types of data (driving history and railroad history) would occur in the context of medical qualification standards. In that context, the railroad would have to determine—based on all of the available data—whether the person was currently dependent on alcohol or drugs.

(5) *Due Process Considerations.* FRA proposes to create procedural safeguards concerning the use of behavioral information. At a minimum, there is a need to ensure the prospective operator is given access to the data and an opportunity to review and comment on it before the railroad acts in reliance on the data. FRA is concerned that in any large scale administrative scheme, such as that involved with motor vehicle licensing, there is an ever present possibility that record keeping errors will occur. The consequence of such an error under this proposed rule could adversely impact an individual's ability to pursue his or her chosen occupational field. Thus, FRA proposes to afford such a potentially affected person a reasonable opportunity to review and comment in writing about the behavioral record being evaluated by the railroad.

FRA proposes to give prospective operators a right to review any written employment record that the railroad will rely on when making its fitness determination. FRA proposes to require that the railroad notify the person of its intent to use such a record, make the record or a copy of it available to that person and then afford a reasonable opportunity for the person to offer their comments to the railroad. Similarly, under FRA's proposal, after a railroad obtains a person's driving record, the railroad will be required to notify the person of that fact, make the record or a copy of it available and afford a reasonable opportunity for comments.

The question of establishing a mechanism for reviewing the propriety of particular aspects of railroad certification decisions, such as those relating to eligibility, would normally need to be discussed only in the context of FRA's proposals for the overall administration of the certification program. Although FRA provides such a discussion later in this document, FRA is aware of the level of concern expressed by the regulated community over possible problems stemming from commencement of the use of motor vehicle driving data. Thus, FRA is alerting readers to the fact that it has accommodated the unique provisions of the RSIA, which appear to require creation of an administrative review process which would directly involve FRA in evaluating railroad decisions to deny certification based in whole or in part on motor vehicle operator driving data.

III Program Administration Concepts

(a) Basic Ideas

FRA proposes to create a certification procedure that will ensure the competency of each operator to perform various kinds of train service. Once a person becomes a "certified operator", all parties will know that he or she has successfully demonstrated the federally determined minimum level of knowledge and skills to operate a locomotive or train. Although a railroad would have the latitude to impose more stringent requirements for its employees, under this proposal a railroad would be required to certify any person who meets federal minimums. Railroads that elect to use more stringent standards and conclude that an individual fails to meet their more rigorous criteria would only have the option of not entrusting operation of locomotives and trains to those who fail to meet corporate criteria.

FRA proposes to have all locomotive operators undergo a full certification procedure within three years from the effective date of this rule.

(b) Initiation of the Program

Section 4 of the RSIA requires that any certification program for locomotive operators become effective within twelve months after issuance of the rule establishing that program. Effective implementation of the program envisioned in this proposal can be not accomplished in that interval in FRA's judgment. Not one of the approximately 500 railroads that would have to comply with this rule will have all of the program elements in place as part of its existing procedures. Until the railroads have the program elements in place, they will not be able to commence evaluating the 30,000 or more existing operators. Curtailing nationwide rail service until a sufficient number of operators can be "certified" under this rule is neither practical nor necessary since FRA data that supports the belief that most existing operators have an appropriate level knowledge and performance skills. Thus, FRA proposes to employ the concept of interim certification for the initial compliance phase of this rule. FRA proposes to have a three year interim certification period during which all locomotive operators undergo the full certification procedure prescribed by this rule. During the three year interval that would begin with the effective date of this rule, FRA believes all railroads will be able to make an orderly and effective transition to the proposed formal certification program.

On the effective date of this rule, there will be three different groups who will have to become certified. The first group is composed of persons who are or have been considered qualified to operate locomotives and trains under various company policies. The second group consists of people who are currently in training to become locomotive operators. The third group contains those who will at some point in the future seek to become locomotive operators. FRA proposes slightly different methods for implementing this program for each group so that railroads can implement this system without impairing the nation's ability to have essential rail service.

(1) Current Operators

The conversion method that FRA proposes to use for the first group would, in effect ratify prior railroad company decisions about a person's knowledge and skills, by allowing railroads to "grandfather" a person into the certification system. This "grandfather" concept being proposed is based on FRA's belief that there is no available evidence to suggest that there are significant numbers of current operators who lack the necessary knowledge and skills to operate locomotives and trains safely. That belief is grounded on FRA's safety assessment efforts over the last few years and the inability of FRA to identify with assurance either inadequate knowledge or insufficient skill levels as a recurring contributing causal factor for such train accidents.

Under FRA's proposal each railroad will be permitted to "grandfather" those locomotive operators that it deems qualified to operate locomotives and trains. Each railroad will be free to decide which of its current workers are deemed qualified to operate locomotives or trains and to determine what class of service that person is qualified to perform. Although FRA is allowing railroads considerable discretion in deciding which people it considers to be qualified on the effective date of the rule, FRA has introduced several factors to prevent abuse of that discretion. For example, FRA proposes to have the railroad identify the operational experience that the railroad relied on in reaching that conclusion. In view of the discretion being afforded railroads, FRA does not propose to create a right to administrative review by FRA of

decisions made under this "grandfathering" provision.

Grandfathered operators will be given three years from the effective date of this rule to acquire a full certification that is based on a railroad's actual individualized determinations concerning their competency and fitness. That means they will have to take and pass a knowledge test and have their performance skills evaluated in the manner previously described. In addition, they will have to undergo the motor vehicle record check and acuity evaluations provided for in this proposal. If the process is not completed within that interval, the operator will not be legally eligible to operate locomotives or trains.

(2) Current Students

The second group of people who will be impacted by this rule are persons currently in a training program. Railroads will be permitted to consider those who complete the program before the rule becomes effective as grandfathered operators under FRA's proposal. Those who are still in a training program on the effective date of the rule would have to undergo the full certification procedure before being deemed qualified. In addition to requiring that such future students undergo a full certification procedure, FRA proposes that the training program they will be given must meet FRA's proposed criteria. In this way all parties will know that future operators have received a training program designed to uniformly provide them with the necessary knowledge and skills.

(3) Former Operators

There are a limited group of people who have previously been deemed qualified to operate locomotives who will not become "grandfathered" operators. Their absence from the grandfather classification normally will occur because they are currently not working for a railroad, or because of inadvertent error in identifying such people. FRA proposes to have those persons undergo the full certification procedure before being deemed qualified under this rule.

(c) The Certification Procedure

FRA proposes to give railroads the ability to devise their own individual procedures for certifying operators within the framework of this rule. What FRA requires is that the railroad be able to demonstrate that the person, certified as being qualified, has in fact been determined to meet the regulatory criteria. Some sense of the freedom that FRA proposes to give railroads can be illustrated by the following examples. Under FRA's proposal, a railroad is free to establish a procedure under which the prospective operator must acquire and present to the railroad the data concerning their visual and hearing acuity as well as their motor vehicle driving records. Conversely, the railroad could require that the person be tested by the railroad's medical staff and execute any documents needed for the railroad to obtain the person's driving records. Railroads are free to use any sequencing of the steps in the process that they deem desirable. When it comes to testing, FRA proposes to require railroads to test a person's knowledge in writing but permit the railroad to select the design of the tests. Thus, railroads will have the ability to use a variety of testing methods including the use of multiple choice, fill-in-the-blank or essay questions. They could rely on a standardized test administered by multiple railroads or continue to use their existing tests. Railroads are free to establish their own weighing scales for grading such tests and may elect to provide training in advance of such testing. Instead of formulating a rigid procedural mechanism for making certification decisions, FRA proposes to have railroads document their procedural choices only in terms of their end result. Thus, FRA only proposes to have railroads maintain sufficient information to identify the basis on which a railroad made the determinations required when certifying a person as an operator. Conversely, the railroad would be required to provide, in writing, a detailed explanation of the basis for any decision to deny certification and furnish that to the prospective operator within 30 days of the denial.

FRA has also given railroads the power to select which corporate officer will be empowered to make the certification decision. However, FRA proposes to require that the person with that responsibility be identified on the certificate.

(d) Identification of Certified Operators

FRA is proposing a certification system under which each railroad would be required to issue a certificate to individuals that meet FRA's criteria qualification criteria which attests to that determination. The certificate envisioned by FRA would be small enough to fit within an ordinary pocket wallet and will contain essential information about the operator and the kind of service that person is authorized to perform. FRA proposes that, within six months of the effective date of this rule, all operators will possess such a certificate and must carry it with them when they are on duty. Certified operators would be required to display the certificate upon request by FRA personnel or railroad supervisory personnel, including supervisors from another railroad, if the operator is handling a locomotive or train in joint operations territory.

(e) The Consequences of Certification

The system being proposed by FRA does not directly affect any individual's employment rights. It is based on the concept that railroad employment decisions are strictly a matter between the individual and the company. It is only when a company wants to have an individual perform the task of operating a locomotive that the FRA rules would have any impact. Even then, the impact of FRA's rule would be limited to preventing a railroad from authorizing an unqualified person to operate a locomotive. FRA's proposed certification requirement is totally neutral on the employment question. The fact that an individual failed to meet FRA criteria would not preclude that person from performing other types of service for the company. Likewise, a company's conclusion that an individual is qualified followed by issuance of a certificate does not confer any federal benefit or rights on that individual to be employed as a locomotive operator. For example, a railroad could decide that a person who met FRA criteria did not meet some additional corporate standard for locomotive service and thus the railroad could decide that it did not want to hire that individual. Such decisions would not be impacted by this rule. Similarly, if the railroad had already hired the person the railroad could decide that it did not want to have that person perform service as a locomotive operator for any variety of reasons.

By contrast, FRA's proposal will impose obligations on any railroad that permits a person to operate a locomotive on its tracks. FRA's proposal would affect the duties not only of the railroad that the prospective operator is employed by but any railroad that permits that person to operate a locomotive over its lines. The most common example of the situations where this issue will present itself is in instances of joint operations. Joint operations are a very widespread method of providing rail service in which two or more railroads operate over a single track. Such operations are most often the result of contractual arrangements, such as trackage rights agreements, but can be the result of an

order from a governmental body, or a judicial proceeding. FRA does not propose to disturb such existing arrangements. It proposes to allow the railroad that controls such operations to continue to assure itself that all locomotive operators performing service on its lines are qualified. There currently are a variety of ways that the controller of joint operations establishes the qualifications of "foreign" line operators. These range from requiring that "foreign" line operators submit to their training, testing and evaluation to delegating full responsibility for training, testing and evaluating to the "foreign" line company. FRA's proposal would allow railroads to retain their existing arrangements but clearly delineate the fact that the company that controls operations retains responsibility for all persons who operate a locomotive on their lines. FRA proposes to accomplish this by permitting railroads to "endorse" the qualification decision of the railroad that employs the operator. Although FRA proposes to allow railroads that control joint operations latitude in testing a prospective operator's knowledge and performance skills, FRA is also giving railroads the responsibility to determine that all such individuals have sufficient knowledge and skill to be capable of operating a locomotive or train under circumstances that may be unique to the operator's general operating responsibilities for his or her employing railroad.

(f) Duration of the Certification

FRA proposes to have such certificates effective for a period of 3 years. Although a three year interval is consistent with current industry practices for monitoring operators knowledge and physical condition, FRA welcomes comments on the advisability of employing a longer or shorter interval. For example, if convinced that a five year interval would not entail undue risk that a person's knowledge, skill and physical condition would deteriorate to unacceptable levels, FRA believes that such a longer interval would be more consistent with its motor vehicle history provision. Whatever the length of the interval, it would be necessary to begin the process of "recertification", toward the completion of that interval. FRA proposes that those seeking recertification will be given what amounts to an entirely new set of determinations including a new search of the motor vehicle driver record system. This approach will assure that railroads are evaluating current information. While this approach is the most feasible one with regard to railroad generated data, it is not the only method for assuring that railroads have up-to-date information on motor vehicle driving data. Although FRA's draft rule language is couched in terms of a single approach, FRA has not totally ruled out alternate approaches to that issue and seeks comments on these alternate approaches.

One of the alternate approaches identified by FRA would permit the individual seeking recertification to report whether he or she had been convicted of any of the relevant driving offenses in the intervening years since their prior certification. If the prospective operator made a negative report, the railroad could rely on that representation and not conduct a review of the records. If the prospective operator reports a conviction during that period, then the standard records check would have to be conducted. The major drawback to this approach is the degree to which it relies on the candor of individual operators to report such incidents. FRA has not selected this option initially because of concerns over such candor that were generated by recent DOT audit of a similar program approach used by the Federal Aviation Administration. In that audit nearly 76% of the people failed to report to FAA that they had been convicted of driving-while-intoxicated. For more details of this audit and the FAA's responses readers can review the April 14, 1989 issue of the **Federal Register** (54 FR 15144). FRA has not totally rejected this alternative because there are ways to effectively police such reporting schemes to enhance the reliability of the reporting. Such monitoring schemes, however, tend to be viewed as being as onerous as the approach initially selected by FRA. FRA solicits commenter views on whether the regulated community has would prefer that FRA employ such an alternative approach or give railroads the option of using this method or that specifically proposed by FRA.

Another alternative that might be employed in this area would be to allow railroads to rely on evidence of insurability. Under this concept railroads would be allowed to rely on the investigative practices of casualty insurance companies to ferret out and evaluate the driving records of locomotive operators who are seeking recertification. If the prospective operator could provide evidence of insurability, then the railroad could rely on that evidence instead of seeking data about that person's driving record. FRA had originally entertained the idea of allowing railroads to substitute such evidence of insurability for the detailed fitness evaluation proposed in this rule but found that the propensity of railroad companies to self insure for loss or damages, including those resulting from unsafe locomotive operator conduct, had virtually eliminated insurance underwriting of this kind of risk. Thus, there are few, if any, established practices for evaluating the insurance risks posed by having "unsafe" locomotive operators in service. There is no absence of underwriting in the automobile insurance context which leads FRA to view evidence of insurability as a possible alternate solution to the recertification checks of person's driving record. There are some difficulties posed by this approach that may render it unworkable. For example, there are varying criteria used by casualty companies when making such insurance decisions in the automotive context because that is a virtually unregulated business decision by insurance companies. However, it might be possible to devise an acceptable set of evaluation criteria to guide such decision making. Assuming that criteria could be devised, FRA has no information about whether those impacted by this rule would have a desire to avail themselves of such an approach. FRA also seeks public comment on this alternate approach.

If, during a three year interval, a certified operator commences working for a railroad different from the one that issued the certificate, there is a basis under FRA's system for requiring that the second railroad only perform a limited set of evaluations focused on questions presented by differences in carrier operating rules and the physical characteristics between the two railroads. Under FRA's proposal, the certification by the new railroad would not serve to extend the interval created by the initial railroad's certification. At the conclusion of that interval, it will be necessary to again fully evaluate the operators qualifications to continue as a certified operator.

(g) Operational Monitoring

FRA accident data can be interpreted to suggest that the most pressing need that this rule should address is not concerns about the basic knowledge and skills of locomotive operators but concerns that they not develop a tendency to become complacent and inattentive. One of the most effective tools to combat such a problem is periodic monitoring of operator compliance with operating rules.

The railroad industry has long had a practice of conducting such monitoring activities under the rubric of "efficiency

testing" and FRA has required railroads to have a program for such monitoring activities since 1978 under the provisions of 49 CFR part 217. To date, FRA has given railroads considerable discretion about how to conduct FRA required operational monitoring activities. FRA's investigative activities have indicated that railroads do not universally employ their discretion wisely. For example, in several of its system assessments of major railroads FRA has documented serious deficiencies in individual railroads' operational monitoring practices. (See for instance FRA System Safety Assessments Reports concerning SouthEastern Pennsylvania Transportation Authority and Consolidated Rail Corporation.)

FRA, therefore, proposes to establish specific criteria for conducting the operational monitoring of certified locomotive operators. FRA's proposal is to have each railroad conduct an on-board evaluation of each operator at least annually and to have each operator's compliance with the operating rules operationally tested at least once a year. FRA contemplates that railroads will use a single on-board evaluation to satisfy both this monitoring provision and the performance skills test proposed elsewhere in this notice. Such an approach would be acceptable to FRA provided that such dual purpose testing occurs within the time interval prescribed for performance skill testing. The remaining facets of the testing program would have to conducted so that: tests are conducted in both an announced and unannounced manner; testing occurs throughout the entire period of a day (unless the railroad conducts operations for a lesser period of time); and railroads equipped with signal systems emphasize adherence to restrictive signal indications in their testing. FRA's proposal would allow railroads that operate event recorder equipped locomotives to employ analysis of the data collected by those devices for this monitoring program as an alternative to on-board evaluations. FRA does not now contemplate permitting the use of event recorder data as a substitute for unannounced testing efforts. Although FRA has not proposed a specific approach for implementing an event recorder alternative, FRA is open to comments on the wisdom of creating such an alternative and possible suggestions on how to devise an effective regulatory formulation of such an alternative.

(h) Unlawful Behavior by Operators

FRA's proposal for certifying locomotive operators is designed to ensure that all operators are qualified, in terms of their knowledge, skill and ability, and are "eligible" to perform service at least to the degree that they have not demonstrated a prior history of taking undue safety risks. It is not designed to resolve many kinds of day-to-day issues of a particular operator's conduct. As noted, FRA proceeds from the belief that possession of an operator's certificate establishes that the individual is both proficient and not demonstrably unsafe and, therefore, should be authorized to operate a locomotive for a given interval.

It is entirely possible that during the interval before recertification will be required an operator's conduct will make it appropriate to review whether that operator should be allowed to continue to operate a locomotive. Although railroads already have one mechanism for responding to such conduct—subjecting the operator to disciplinary proceedings that can result in loss of or suspension of the operator's employment—there are many factors unrelated to safety considerations that could prompt a railroad not to exercise its disciplinary prerogatives. FRA is considering augmenting the remedial power of railroads by creating an ongoing oversight of the conduct of locomotive operators certified under this rule.

As envisioned by FRA, each railroad would be responsible for canceling or revoking its certification of an operator, if that person is involved in unlawful behavior during the certification interval. The power to withdraw certification would be invoked by the railroad whenever to operator had been involved in one or more poor safety performance incidents. Depending on the type of points system FRA adopts (unified— where all events are part of a single total—or bifurcated— where driving history and railroad operations remain separate categories), once the operator has accumulated sufficient points to preclude recertification, the railroad would be required to affirmatively act to withdraw the existing certification. In order to make either point system approach effective FRA would have to require that operators report to the railroads all relevant motor vehicle driving incidents that occur during the certification interval.

The primary alternative to that oversight approach is to use a certification of short duration and to rely on the railroads to wisely and effectively use their independent disciplinary powers to remedy behavior that occurs during the interval between certification determinations. FRA proposes to follow the short interval approach in this notice but welcomes comments on the wisdom of adopting the continuing oversight alternative.

FRA also proposes to improve the agency's capacity to respond to unlawful operator conduct. The RSIA grants FRA the authority to disqualify certain individuals. Under the statute FRA may disqualify individuals who are shown to be unfit to perform safety sensitive functions, based on the individual's violation of an FRA safety rule regulation or order. FRA has proposed adoption of the procedures that will control disqualification proceedings (53 FR 49695; December 9, 1988) and will soon issue final rules on this topic. In that proceeding, FRA identified the fact that it considered virtually all train service personnel, which would include locomotive operators, as performing a safety sensitive function.

Currently, FRA has only a limited set of rules that are specifically focused on and would govern the behavior of an individual operating a locomotive. Existing FRA rules basically prohibit locomotive operators from possessing or using alcohol and controlled substances; willfully tampering with safety devices such as cab signals and alerters; and coupling to or moving rolling equipment protected by blue signals. Thus, FRA is already postured to respond through a disqualification proceeding, if appropriate, to certain kinds of unsafe operator behavior.

In reviewing its accident data, FRA has identified three types of events that are prohibited by carrier operating rules but not current Federal regulations. In each instance FRA is confronted with potential action or inaction by an operator about control of a train which clearly is the direct and immediate responsibility of the locomotive operator and which would reflect a serious failure to be attentive to significant operational safety concerns. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (3) failing to comply with a mandatory directive and entering a segment of track without authority.

FRA proposes to make such conduct unlawful as a matter of federal regulation for the purposes of this rule. Thus, a violation of that prohibition could serve to form a predicate for disqualifying a locomotive operator. As

being proposed by FRA, the unlawful conduct of the individual locomotive operator would be attributable, for civil penalty purposes, to a railroad company that established the underlying operating rule. Although FRA does not anticipate having to seek recourse against railroads for locomotive operator noncompliance with the railroad's operating rules on a frequent basis, there may be instances in which it is appropriate to hold the railroad accountable for the unsafe conduct of its operators.

(i) Process for Reviewing Adverse Determinations

Once this rule is in effect there will be some instances, in which a railroad will make a determination adverse to the hopes of a prospective operator. Section 4 of the RSIA requires that, as a minimum, FRA provide an administrative hearing for operators who believe they have been improperly denied or granted a conditional certification on the basis of their driving history. Thus, any review scheme proposed in this rule must include some degree of FRA involvement.

Selection of the Reviewing Body

In many instances, if not all instances, the dissatisfied prospective operator will want recourse to some reviewing body different from the railroad that rendered the unfavorable decision. Short of judicial review of such decisions or recourse to administrative bodies such as Equal Employment Opportunity Commission, there are only two non-railroad mechanisms immediately available for adjudicating such reviews: an FRA-managed process or the grievance resolution procedures of the Railway Labor Act administered by the National Railroad Adjustment Board (NRAB), any of its divisions or delegates, or other boards of adjustment.

The NRAB has a long history of resolving analogous issues. The processes developed by the NRAB are familiar to most of the parties who can be expected to seek recourse to them and the quality of decisions rendered by the NRAB is well recognized. Thus, FRA initially favored having these disputes handled by that mechanism. Further study has revealed several limitations to use of the NRAB for these purposes. As noted earlier, the functions of the NRAB are significantly different from that FRA and, as has become evident in recent NRAB decisions in the alcohol and drug area, there is some danger of conflicting or inconsistent decision making that could adversely impact administration of the FRA program. Moreover, the NRAB setting brings with it attendant risks that safety regulatory policy issues will become intertwined with or subordinated to labor-management issues that are not of concern to the administration of FRA's safety program. Finally, data publicly disseminated by the National Mediation Board concerning near term fiscal problems for the NRAB, which are producing extensive case backlog and delays in case resolution.

Because of these facts FRA has temporarily rejected use of the NRAB alternative. Although FRA has rejected that alternative in making this proposal, FRA seeks the views of interested parties on whether it should rethink its entire position on this issue or at least permit the use of that mechanism as an alternative that could be selected in lieu of using the FRA system described below. In short, to permit operator candidate to have an election of remedies. Commenters favoring an election of remedies approach are asked to specifically address how they would integrate the statutory constraint concerning review of driving history into such an approach. Moreover, FRA desires to hear the views of interested parties about the availability of NRAB review for all operator certification candidates, particularly those employed by small railroads and public transportation authorities.

Although it has significant manpower and resource allocation implications for the agency, FRA proposes to shoulder responsibility for review of adverse railroad certification decisions. FRA proposes to create a special organization to resolve disputes of this nature. Although actual creation of this organization requires issuance of an internal FRA order, FRA has decided to reflect the existence of the organization and its general composition in this proposed rule to foster better public comprehension of the system FRA envisions under this regulation. FRA proposes to have this organization evaluate both adverse decisions that are based in whole or in part on motor vehicle driving data, which the RSIA appears to intend FRA to review, and all other disputed certification determinations that are properly the province of FRA review.

The actual procedures that an aggrieved certification candidate would follow under this proposal require that the person petition FRA for review of the railroad's certification decision. To initiate that process a person FRA would merely require the individual to furnish a written description of the facts and circumstances that serve as the basis for the allegation that the railroad improperly denied certification and provide a copy of the railroad's denial letter.

After giving the railroad an opportunity to submit pertinent information, FRA will decide whether the certification was wrongfully denied and issue an order granting or denying the petition. Any party that was aggrieved by that decision would have a right to challenge that order by filing a request for a hearing within 90 days.

That hearing would be a trial-type evidentiary hearing similar to that envisioned for the disqualification proceedings in Part 209. After review of the agency's decision the hearing officer would issue an order either affirming or reversing the agency's initial decision. The hearing officer's order would constitute final agency action on the matter unless an aggrieved party filed an appeal with the FRA Administrator.

FRA's proposal to make such hearings into formal, trial-type evidentiary proceedings exceeds the RSIA requirements for such hearings. However, the nature of the review that would need to be conducted in some instances appears to warrant such treatment. Moreover, providing the opportunity for trial-type proceeding is designed to ensure that, should the agency's final action undergo judicial review, it will not be trial de-novo. There are certain complications in taking this approach because of the administrative burdens and potential for delay associated with such a cumbersome review process. FRA anticipates that most disputes will be very straight-forward matters and that there will be hearings only in rare instances where there are significant factual disputes. FRA solicits comments on this aspect of the proposal as well. Specifically, FRA would be interested in views on the question of whether more informal approaches, such as that employed in resolving requests for waivers of compliance with its safety regulations (see 49 CFR Part 211), would be an adequate substitute in the opinion of interested parties.

The Degree to Which Decisions are Reviewable

FRA is proposing to establish minimum qualification standards and to permit railroads to adopt more stringent criteria. Issues concerning an individual railroad's more rigorous criteria are not a subject that FRA can appropriately review. Resolution of such issues are properly the subject of dispute resolution procedures found in the Railway Labor Act and many collective

bargaining arrangements. Under the review procedures of this rule, FRA will only be concerned with questions about a failure to meet minimum FRA standards. Even within that limited subject area, FRA's review will be constrained to some degree. For example, in the absence of standardized testing, FRA will not attempt to substitute its opinion for that of the railroad on matters of subjective judgment. Thus, individuals who take and fail a operating skills performance tests and seek FRA review can anticipate that FRA will look at the overall quality of the test procedures to assure compliance with this rule but can not expect FRA to substitute its opinion for the judgment of the designated railroad evaluator about the quality of their skills.

Section-by-Section Analysis

FRA contemplates dividing this rule into subparts each of which would contain multiple sections. This proposal contains all of the anticipated subparts including those that are being reserved for future proposals.

Subpart A

This part of the proposal contains the general provisions of the rule, including in § 240.1, a formal statement of the rules purpose and scope. This section also contains a clear recitation of the fact that this rule would not constrain a railroad's ability to prescribe additional or more stringent requirements for its locomotive operators.

The statutory definition of a "railroad" includes all entities that can be construed as railroads by virtue of providing non-highway ground transportation over rails, electromagnetic guideways, or other technologies not yet in use. Thus, § 240.3 specifically identifies the fact that FRA is proposing to have these rules apply only to railroad that operates on standard gauge tracks and not situations where the railroad is employing different technologies for providing transportation service.

Section 240.3 also identifies several other situations in which FRA proposes that this rule would not apply despite the presence of standard gauge trackage. The first exclusion mirrors the statutory exclusion for rapid transit operations in urban areas that are not connected with the general system. Caution is needed because there are some rapid transit type operations that, given their links to the general system, are within FRA's jurisdiction and FRA specifically intends to have these rules apply to those rapid transit type operations. For example, the operations of Port Authority Trans Hudson (PATH) are the type rapid transit operations that FRA proposes to have this rule apply to.

The second exclusion addresses several types of operation that occur on tracks that are not part of the general railroad system (i.e., the standard gage, interconnected network of railroads that makes possible the interchange of goods and passengers throughout the nation). This exclusion would encompass operations commonly described as tourist, scenic, or excursion service to the extent it occurs on tracks that are not part of the general railroad system. This exclusion also addresses operations that occur within the confines of industrial installations commonly referred to as "plant railroads" and typified by operations such as those in steel mills that do not go beyond the plant's boundaries.

In both these instances, the key factor for exclusion is the fact that the track over which the operations are occurring is not part of the general railroad system of transportation. Again caution must be exercised in examining whether a particular factual situation meets this criteria since, even where a railroad operates outside the general system, other railroads that are unequivocally part of the general system may have occasion to enter the first railroad's property (e.g., a major railroad goes into an automobile plant to set out or pick up cars). FRA intends to adhere to its current policy of not treating such actions as creating a basis for sweeping the plant railroad under FRA's jurisdiction except for the limited area of compliance with the track safety standards. In the track standard area, FRA policy has been to treat the plant railroad as the track owner for the tracks being operated over by the general system railroad. In converse situations, where the plant railroad itself operates beyond the plant boundaries on the general system, FRA also intends to adhere to its current policy of considering the plant railroad to be subject to FRA's rules during the operations that occur on the general system trackage.

Section 240.5 contains the definitions that FRA proposes to employ in this rule. As with any new set of regulations the definitions for this proposal contain considerable information about the structure of the regulation. In this instance FRA's proposal contains a variety of terms that are different from colloquial usage of the terms in the industry and therefore should be examined carefully. The following examples illustrate the kinds of factors addressed by these definitions. FRA proposes to use the expansive definition of what constitutes a locomotive developed during revision of the Locomotive Safety Standards in 1982. Implicit in this approach is the fact that FRA's proposal will include operators of steam locomotives as well as operators of so called trackmobiles and cab control equipment. Under the definition of "locomotive operator", FRA proposes to incorporate the exclusionary concepts for inspection and maintenance activities discussed earlier. FRA has also defined the group of individuals who will be authorized to perform performance skill testing. FRA proposes to designate such persons as "designated supervisors of locomotive operators" and to establish minimum criteria for any person who will be so identified.

Section 240.7 identifies FRA's ability to grant waivers of compliance with the requirements of this rule. Requests for such waivers can be filed by any interested party. For example, a person with visual acuity problems could seek to have FRA grant a waiver of compliance with that provision. In reviewing that request, FRA would conduct a factual investigation to determine whether there was a basis to deviate from the general criteria without compromising or risking a diminution of rail safety.

Section 240.9 contains the penalty provisions of the proposed rule. As noted earlier, FRA has already provided extensive public guidance on how it intends to employ the enforcement power that exists under this provision. In addition to FRA's policy statements concerning exercise of its enforcement and disqualification authorities, readers may want to review FRA's comments on the discharge of its responsibilities under the regulations prohibiting alcohol and drug use by rail workers and those prohibiting tampering with locomotive mounted safety devices. This section also addresses the issue of imposing criminal sanctions for knowing and willful falsification of records required by this rule. The potential imposition of criminal sanctions is authorized by section 209(e) of the Federal Railroad Safety Act. Decisions to seek convictions under this provision would rest with the Department of Justice, not FRA.

Subpart B

This subpart contains the basic requirements for having qualified operators. Section 240.11 requires all railroads to determine that knowledgeable and skilled operators are at the controls of every train, even if that might impinge on the desire of some

individuals to experience the thrill of "running a train". FRA specifically proposes to prohibit railroads from requiring or permitting an unqualified person to operate on their lines. This prohibition would apply regardless of whether or not that person is an employee of the railroad. Under FRA's proposal, responsibility for determining who is qualified in joint operations would rest with the railroad that is responsible for the control of operations. Railroads that control the operations will have the duty to make a set of evaluations for each "foreign line" operator. The details of FRA's proposal on this point are contained in the discussion of subpart C below.

This subpart also contains the class of service concept that FRA is introducing in this rule. Five distinct levels of operator service are identified and the limits of their operational authority are explicitly provided for in this section. Note that a person deemed qualified to perform the more extensive operation is deemed qualified to perform the less challenging tasks.

As structured by FRA, § 240.13 also would permit a railroad to decide to employ only one class of operator or multiple classes. For example, a railroad that served the steel industry and whose operations were fully described by FRA's terminal service operator classification might elect to have all of its operators fit within that class of service designation. Such a railroad could then tailor both its knowledge and performance skill testing programs to that single group of operators. FRA has elected to propose this type of tiering arrangement in lieu of one based directly or indirectly on the size of the railroad. This type of operations oriented approach is the most safety relevant method of distinguishing between the varying operational realities that exist in the industry. It also will provide a simple method for any railroad that finds it appropriate to adjust their operations on a short notice basis.

Proposed § 240.15 addresses situations in which a railroad elects to impose additional limitations on the service a person can perform. The most prevalent reason for imposing such limitations involves a need to restrict locomotive operators to territory with which they have some familiarity with its physical characteristics. This section provides a mechanism to reinforce such railroad decisions when they are based on a safety rationale. FRA is proposing complementary provisions to ensure that individuals are not called on to perform service for which they are not qualified. These are described in the discussion of subpart J.

The concept of familiarity with the physical characteristics of the territory is deeply imbedded in the railroad industry because the safe and efficient operation of a train requires that the locomotive operator have knowledge of the geography and topography of the line of road and have a comprehension of the train performance implications of that data. FRA has addressed the issue of assuring that operators have sufficient knowledge about the physical characteristics of the territory over which they are being authorized to operate a train at several points in this proposal. Since this concept has two elements (knowledge and comprehension) and applies to at least three different groups of operators (current operators, new operators, and those with some prior experience) and is one of the most pervasive retraining practices in the industry, FRA's proposal addresses different aspects of this concept in their relevant contexts.

For example, all operators normally would have their knowledge of the physical characteristics tested through inclusion of relevant questions on this topic in the § 240.71 or § 240.77 testing. However, if a railroad so desires that testing could be done through a discrete examination for this explicit purpose. For "grandfathered" operators, the comprehension aspect automatically would be satisfied by prior operation over the territory. But, if more than a year has elapsed since a grandfathered operator performed service on a line, at least one round trip while accompanied by a qualified operator would be required under the retraining provisions of § 240.67. The topic is also relevant to "new" operators. A "new" operator would include newly trained operators and those with many years of service but without previous experience on this territory. In this setting FRA's proposal would address the topic in the context of its student training proposal in § 240.63. Although FRA has segmented its requirements concerning familiarity with physical characteristics, to associate them with the relevant aspects of this program, FRA's proposal concerning the knowledge and comprehension of physical characteristics follows the historical practices of the railroad industry.

Subpart C

This portion of the rule identifies the distinct determinations each railroad must make for each locomotive operator candidate and the various methods that railroads can rely on as alternate strategies for evaluating a prospective operator's qualifications. For example, § 240.21 authorizes railroads to upgrade a person from the student operator category to service operator status by relying on the training program. It relieves a railroad of the duty to conduct an intermediate review of their other qualification criteria. Thus, a person who was certified as a student operator and then upgraded to a locomotive or train service operator would not have to be given a new set of acuity tests or a new motor vehicle records review until the three year interval of their new certificate expired.

Section 240.23 contains provisions to address instances in which an operator might be considered a "foreign line" operator because he or she is operating a locomotive during a detour movement or over a segment of joint operations trackage. Essentially, FRA would permit the railroad controlling operations considerable latitude in selecting the method for discharging its responsibilities. The railroad could conduct an independent set of determinations, perform a partial set of determinations, focused perhaps on its operating practices, or simply respect the certifying railroad's decision. FRA's proposal for this provision does reflect the "grandfathering" concept for implementing this rule after its adoption.

Section 240.25 contains provisions to address instances in which an operator commences working for different railroad from the one that originally evaluated the operator. These provisions would also permit a railroad to continue to rely on the determinations made prior to an operator experiencing a break in service or prior to a change in corporate structure or ownership. Finally, this subpart contains a provision, section 240.27, which is designed to accommodate qualification determinations that are made pursuant to requirements issued by the Canadian Transport Commission in 1987.

Subpart D

This subpart contains FRA's proposed method for making the transition to certification status for those currently involved in operating a locomotive, the "grandfathering" concept for implementing this rule after its adoption. Section 240.31 contains the detailed elements of the "grandfathering" provision for most railroads and § 240.33 contains the analogous provisions for railroads that conduct joint operations. Note that the railroad's duty to make a formal determination concerning the "grandfathered" operator within 36 months and the person's lack of authority to continue in service as a

qualified operator beyond that date are expressly provided for in these sections.

Subpart E

Section 240.41 contains the requirement that all operators be examined at intervals of not more than three years to determine that they possess the minimum levels of vision and hearing need to operate a locomotive. Both the need for such standards and the testing interval proposed are currently employed or exceeded by virtually all large railroads and commuter operators. Thus, FRA's proposal will have a minimal impact on most operators. FRA believes that only some of the emerging regional railroads and the smaller railroads will be impacted by this proposal.

FRA proposes in this subpart to have a written document to attest to the vision and hearing examination but would permit the examination to be conducted by a wide range of trained professionals. Section 240.43 contains the acuity standards that FRA proposes for an operator's vision and hearing. In essence, FRA proposes that distant vision be 20/40 with or without the use of corrective lenses. This is the same Departmental standard required for commercial truck drivers and commercial seafarers and is similar to the recommended standards of the Association of American Railroads and the FRA's research data. It is slightly lower than the requirement for commercial pilots. FRA also proposes a field of the vision and color recognition criteria. FRA's proposed hearing levels permit the use of hearing aids and would only preclude a person who is unable to perceive 50% of auditory sounds throughout the normal range of hearing. Again FRA's proposed levels for minimum acuity levels are similar to those established for commercial truck drivers, commercial seafarers and the recommendations of AAR and FRA research.

Section 240.45 requires that the examination to measure a person's hearing and vision acuity be conducted by licensed medical service personnel such as medical doctors, physician assistants and optometrists. This section also requires that when a person needs a corrective device to meet the acuity standards that fact must be noted on the person's certification documents. The person is obligated to use the corrective device while on duty. As noted earlier, an operator who does not meet these criteria can seek a waiver of compliance under the provisions of § 240.7.

Subpart F

This subpart contains the basic requirements for conducting an evaluation of a prospective operator's "eligibility". Section 240.51 sets forth the basic requirements for obtaining the data concerning the prospective operator's prior employment behavior and his or her motor vehicle driving behavior. Railroads would have the primary responsibility for obtaining employment data but the primary obligation shifts to the prospective operator to take the actions that will result in the railroad obtaining the necessary information about driving behavior. This section contains the requirement that the railroad furnish the operator candidate with an opportunity to review and comment in writing on any poor safety performance data before the railroad reviews and evaluates it.

Section 240.52 contains the corollary duty of operator candidates to seek driving history data. Depending on state agency practices, the operator candidate may have to incur nominal fees or use existing state procedures to obtain the state's records. FRA's proposal makes it mandatory that candidates adhere to such state procedural rules. Similarly the actions needed to secure the NDR data may cause the candidates to incur minimal expenses in getting their request notarized or in complying with state procedures. FRA's proposed language does not afford the candidates latitude in such instances. Since it is possible that some operator candidates will either have obtained more than one license or never have obtained any license, FRA has included proposed provisions to address both contingencies.

Section 240.53 contains the requirement for obtaining additional information from the non-issuing state agency if the NDR check reflects a probable matching record. Since results of the NDR check will be sent to the railroad, this section places primary responsibility on the railroad to obtain the data. As with the operator candidate obligations, FRA proposes to require that the railroad abide by all state agency procedures for furnishing such information and would require the candidate to assist the railroad in obtaining the NDR identified data. This section also contains a provision for addressing instance in which a railroad is unable to obtain data after reasonable efforts to do so.

Section 240.53 and 240.55 contain the respective limitations that would apply when a railroad is faced with adverse driving history information and railroad employment records concerning a prospective operator. Both contain prohibitions against using outdated information and against relying on information that does not constitute safety performance data. As drafted, substance abuse incidents will go initially to the MRO, EAP counselor or equivalent person to determine whether the event or events were followed by an appropriate course of counseling. If the person making that determination finds an appropriate course of counseling or treatment occurred, the events will not be considered under § 240.57. If the conclusion is that successful rehabilitation is not in progress or completed, then a determination must be made about whether the candidate is suffering from psychological or chemical dependency involving the use of alcohol or drugs. If that a dependency situation exists then the candidate will be treated in the same manner provided for in § 219.405(d) and the railroad can conditionally certify the person. If no dependency is found, the points ascribable to the incidents shall be considered in accordance with the provisions of section 240.57.

Section 240.57 contains the proposal to prescribe the course of conduct the railroad must follow based on the prospective operator's safety performance record. As noted earlier, a person with a poor record who has accumulated more than six points is ineligible for certification. That ineligibility will last for a five year interval unless the person has been involved in more than a single occasion of acquiring in excess of six points. Repeated poor performance would result in a lifelong disqualification.

Section 240.59 contains the provisions for conditionally approving operator candidates with marginal records. It permits certification of individuals recovering from substance abuse dependency and those who have behaved marginally but have undergone additional training to improve their future safety performance.

Subpart G

This subpart contains FRA's proposed requirements for the training of locomotive operators. It addresses initial training of individuals who desire to become locomotive operators and the supplemental training of previously qualified operators.

Section 240.61 is structured to reflect the fact that FRA proposes to allow railroads to decide whether they have a need to train people and only when they answer in the affirmative do the requirements of this section become

applicable. Once the section becomes applicable, a railroad is required to file its training program with FRA. That filing must include a detailed description of the program and include copies of the written instructional materials being used in the course so that it will be possible to determine whether the program meets the criteria established in § 240.63. In addition, if the railroad makes a significant change in the program, FRA must be informed in writing of the change and, if appropriate, given a copy of the new or modified instructional materials or the relevant portions of such materials.

FRA plans to review and evaluate these training programs. Since prior experience has demonstrated that such review cycles can be lengthy, FRA proposes to allow a railroad that has not had an affirmative response from FRA to presume that their program has been approved. Such a presumption will take effect sixty days from the date of the program's filing with FRA. Although FRA will thereby assure that delays in the review cycle do not hinder initiation of such training programs, FRA reserves the right to revoke any approval, if it subsequently determines that the program does not comply with § 240.63. Finally this section contains two different deadlines for filing such programs in order to accommodate the fact that both existing and future programs will be effected by this rule.

Section 240.63 contains the essential elements for all locomotive operator training programs. FRA proposes to have all programs contain two distinct components. Under FRA's proposal for the classroom component, the industry tendency to use very informal, learn by watching, or unstructured on-the-job training approaches will no longer be acceptable. Railroads will still be allowed to use such methods, but they will have to be used in a more structured context and employed only in a limited effort to supplement a more formal classroom type presentation. As part of its efforts to upgrade the quality of instruction, FRA also proposes to require that the railroad formalize its selection of training personnel and ensure that these people have the requisite skills. Although the larger railroads currently appear to do an adequate job in this area, a number of the intermediate size and smaller railroads appear to have inadequate practices. It should be noted that FRA proposes to require that railroads make a special effort to train newly hired workers as well as more senior workers who are not familiar with the risks associated with train operations. In FRA's judgment it is essential that such people be educated about the proper actions to take to ensure their personal safety before allowing those people to work in close proximity to moving equipment.

FRA proposes to specify both a minimum duration for each subject matter that must be addressed and for the overall classroom component of the program. The duration factors that FRA selected reflect FRA's judgment on the minimum number of hours needed and not on optimum or necessarily desirable levels of training effort. The proposal reflects a distillation of FRA studies of this subject, its prior involvement in a training program on a large railroad and current industry programs reviewed by FRA in the context of performing recent safety assessments on a number of railroads.

FRA also proposes to establish criteria for the operational experience component of the training program that is designed to teach performance skills to the operator trainee. FRA's basic concerns are that the person actually receive experience handling trains, not simply spend time in the cab making observations and that the person experience a variety of train operation experiences, not merely log a given number of hours on a single type of train because that is the fastest way to accumulate the requisite number of operational hours. Again, FRA has set minimum duration factors with gradations to reflect FRA judgment about the minimum level of training needed based on the available data. Implicit within the proposed duration factor is an assumption that the trainees are operating on the railroad on which they will later be certified to operate and are thus continuing the historical pattern of learning both the performance skills and the physical characteristics of the territory at the same time. FRA also proposes to assure that each railroad exercise care in selecting the individuals who are responsible for providing the actual train handling/performance skill training by setting forth minimum experience levels for such instructors.

Under FRA's proposal a railroad that wanted to train a person to perform limited train service, (i.e.; operate short trains at slow speeds; the kind of trains typically found on a small railroad) would have to give that person a total of 90 hours of classroom training and 60 hours of operational training for a total of 150 hours of training. On the other end of the spectrum, a large railroad that wanted to have a person capable of operating any train on the system, would have to give that person a minimum of 150 hours of classroom training and 480 hours of operational training for a total of 600 hours of training. As noted earlier, FRA proposes to allow railroads to reduce the number of hours needed to provide a person with proper operational training by employing a simulator. This section contains the specifics of that proposal to permit substitution of simulator training for actual time in the cab of a locomotive. FRA's proposal distinguishes between types of simulators but contains a minimum level of actual train operation time regardless of the type of simulator employed. If a large railroad were to employ this training option by using the more sophisticated Type 1 simulator, the total hours of training that FRA proposes to require could be reduced by nearly 150 hours. Use of a less sophisticated simulator would also bring significant reductions in the duration of the training program.

FRA anticipates that some railroads and even some non railroad entities will provide training for locomotive operators. Both this section and section 240.21 are designed to accommodate such an approach to this training requirement.

Section 240.69 contains FRA's proposal for the supplemental training of previously qualified operators. FRA's proposal to require supplemental training is limited and is based on the passage of time, the introduction of new technology, or on a lack of familiarity with the physical characteristics of a given territory.

FRA proposes to require that locomotive operators receive two types of training based on the passage of time. The first type of such training amounts to periodic refresher training. Such supplemental education would have to occur at roughly 36-month intervals and be of at least an eight hour duration. During that period, the operator would receive instruction concerning issues relating to mechanical safety topics and proper train handling techniques. The second aspect of FRA's supplemental training proposal that is predicated on the passage of time is the need to have operators maintain familiarity with the physical characteristics of the territory over which he or she can be called upon to operate a train. Given the significance of such familiarity, FRA proposes to require that if more than twelve months have elapsed since an operator operated a train over a territory it will be necessary for that individual to receive refresher training. Supplemental training concerning physical characteristics can be accomplished by operation of a

locomotive for at least one round trip on that territory or attendance at a classroom training program focused on this topic and augmented by a film depicting actual operation over that territory.

The other aspect of the supplemental training proposal is predicated on changed circumstances. The need for such training can occur either when a person is initially learning to become familiar with the physical characteristics of a territory or when new technology is introduced. FRA proposes that an individual who is attempting to learn a new territory make at least three round trips over the territory. The operator must be accompanied by a another locomotive operator or designated supervisor of locomotive operators who is already conversant with the physical characteristics of that territory. The final aspect of supplemental training involves educating operators concerning new technologies. FRA proposes to identify the only two types of changes that currently warrant inclusion in a mandatory program. Although it can be argued that a prudent railroad would want to include a wider range of technologies for retraining purposes, FRA does not believe that such prudence is the proper test for federally mandating supplemental training. FRA proceeds from the posture that use of the technology should require a significantly different method for controlling a train before mandating that retraining be given. In FRA's judgment, the use of air flow methodology for conducting train airbrake tests and the new advanced train control systems undergoing research and development meet or exceed that threshold and warrant mandatory retraining. Conversely, the introduction of new locomotive cab designs or the use of end-of-train monitoring devices do not meet that test because they basically involve continued use of the existing methods of controlling the operation of a train.

Subpart H

This subpart contains the provisions concerning the testing of an operator's knowledge. Section 240.71 establishes the requirement to perform such testing before allowing new operators to enter service and to test "grandfathered" operators within 36 months of the effective date of this rule.

Section 240.73 contains the criteria for all such tests including those required for recertification under § 240.77. FRA proposes to establish only the basic criteria for these tests. Railroads are both free and encouraged to employ more extensive testing than that which FRA proposes to require. Indeed, FRA hopes that many of the large railroads that have devised far more comprehensive testing programs will assist the other railroads that lack the resources to develop such excellent programs. The criteria FRA proposes would require some railroads to eliminate poor practices that have arisen over the course of time including the use of very brief, overly simplified exams that may be taken with open rule books as well as the use of oral exams that lack any clear structure or uniformity. FRA also proposes to strengthen the signal testing aspects of many current test programs.

FRA proposes that railroads cover at least five different subjects in their tests. FRA's list of subject matter areas to be covered by these tests may require some railroads to rethink their testing practices to a limited degree. Although many railroads have excellent operating rules tests, not all railroads have addressed such topics as compliance with Federal safety rules or personal safety practices when designing the more traditional operating rules type exams for locomotive operators. FRA also encourages railroads to consider including testing of a person's knowledge about the physical characteristics of the territory when examining a person's knowledge of train handling practices.

Section 240.75 addresses the consequences of failing an initial knowledge test. It is subdivided to focus on three different groups of persons who will encounter such tests. The first group is comprised of individuals who are initially being grandfathered into this certification program. If such a person fails their initial examination, FRA proposes to allow the railroad to permit that person to continue to operate a locomotive for a period of not more than 60 days after it is determined that the failure occurred. Within that interval, and no sooner than 30 days after the first test, the person can retake the examination and the railroad is required to provide such a retake examination. Failure of the first retake exam will result in the railroad not being authorized to permit the person to operate a locomotive until the candidate successfully passes a subsequent examination. A second retake examination may occur but may not take place sooner than 30 days after the first retake. FRA does not propose to require that a railroad provide a second retake examination. If such a second retake is afforded the person and it results in a third failure, the railroad cannot permit the person to operate a locomotive or train until the person successfully completes a full scale training program.

FRA proposes a similar set of provisions for student operators who have completed a training program and for a small miscellaneous group of other operator candidates. The pool of other candidates is primarily composed of persons who potentially would have qualified under the "grandfathered" operator concept but were excluded from the ambit of that provision by virtue of the fact that they were not working for a railroad on the effective date of the rule. It would also include those who experience a lapse in service as an operator for any variety of reasons. In these instances FRA proposes to take a more restrictive approach and preclude the person from operating a locomotive, absent direct supervision, if they fail the initial test.

Section 240.77 contains the proposed requirement that railroads administer similar tests to operators at three year intervals. As noted earlier, FRA proposes that such recertification tests, like other aspects of the recertification process, occur within 90 days of the date that the current certification period terminates.

Section 240.79 delineates the consequences of failing a recertification test. FRA will allow retesting as in the initial testing effort but would preclude railroads from permitting the operator to operate a locomotive, absent direct supervision, until successfully passing the recertification test.

Subpart I

This subpart contains a similar set of provisions to that proposed for operator knowledge but focused on the issue of the operator's train handling skills. FRA's proposed provisions for evaluating a person's train handling skills are necessarily more generalized than those for knowledge testing. In addition, they are more subjective because they necessarily entail a undefinable and unquantifiable element of judgement. FRA proposes to require that railroads assign this evaluation responsibility only to people who have actual experience performing the tasks involved. In essence, FRA proposes to continue having railroads rely on the type of experienced person typically identified in the industry as road foreman of engines or traveling engineers. FRA is not concerned about the title given the evaluator but is very concerned that the person bring the proper background to the task of making complex judgments. FRA has included a

proposed delineation of the experience levels needed for such evaluators in its definition of "designated supervisor of locomotive operators" set forth in § 240.5(d).

Section 240.81 contains the requirement to conduct a performance skill test for all operators. It contains the authority to delay the initial testing of grandfathered operators for a period of not to exceed three years.

Section 240.83 contains the criteria for testing. FRA proposes to require railroads to evaluate prospective operators under whatever conditions would be considered the most demanding type of service that the person could reasonably be expected to operate once deemed qualified. FRA's intent in this regard is to preclude railroads from oversimplifying the test conditions and utilizing test environments that really do not allow an effective assessment of the prospective operator. Of particular concern to FRA is the fact there have been instances where operators have elected for many years to perform service in positions where there were only minimal demands on their skills. Then, due to changed circumstances, they were given responsibility to operate under very demanding conditions. One fairly typical illustration of this type of problem involves a situation in which an operator elects, courtesy of seniority factors, to perform yard service for many years and then finds that the yard job is no longer available and that the new assignment requires operating heavy tonnage trains over undulating topography at slow to moderate speeds. FRA proposes to have railroads evaluate that operator on the more demanding service, if in fact the operator is eligible to perform that duty. FRA's intent is not to require railroads to conduct an exhaustive analysis to select the most arduous testing conditions tailored to each of their operators. Its intent is to compel railroads to exercise reasonable care in selecting their test trains so that they are evaluating operators under conditions that constitute fairly typical circumstances that the railroad would expect the operator to encounter in the normal course of events.

Once the railroad has selected the train or trains that provide the proper evaluation mechanism, FRA proposes to permit the person making the evaluation considerable latitude in making the necessary assessment of the operator. FRA's proposed test criteria only require that the test be of sufficient duration to permit an effective evaluation. In some circumstances that duration period could be as brief as one hour or under other circumstances could last for several hours. FRA has not proposed a rating system for the evaluators or even a check list of the particular actions that warrant careful attention. However, the need for more detail in the test criteria is a subject that FRA is particularly interested in receiving comment on. FRA's decision not to propose a specific guide or checklist for such evaluations is based on the fact that many railroads have devised such guidance materials for their personnel. Review of a number of these guides has convinced FRA that there is considerable diversity of opinion about how to approach this topic and FRA has not found evidence that any particular approach is more or less effective than any other. In general what the current individual railroad guides do is provide a reminder to consider in more or less detail five basic subjects during the evaluation. Depending on the individual railroad, more or less detail and emphasis is given to the following areas: operating rules and practices; equipment inspection and testing; train handling procedures; familiarity with the physical characteristics of the territory; and, to a limited degree, compliance with Federal safety rules. FRA is not proposing use of a specific Federally devised form or, for that matter, proposing use of any form. FRA only proposes to require that the designated supervisors document the relevant data on which they base their evaluation. The level of detail for that documentation is contained in § 240.109. This section also allows a railroad to use a simulator for conducting these tests.

Section 240.85 identifies the consequences of failing an initial performance skill test. This section also distinguishes between the three groups of prospective operators: grandfathered, student and other candidates. Although FRA proposes to permit all people more than a single opportunity to pass this test, the consequence of failure would serve to immediately bar all prospective engineers from operation of a locomotive unless operating under the direct supervision of a qualified operator. For grandfathered operators, FRA proposes to permit retesting 15 days after the initial test. This brief interim period should provide sufficient opportunity for the applicant to improve his or her skills. It will also minimize the financial impact for that operator. FRA does not propose to permit the grandfathered operator to continue running a locomotive without supervision during that interval because the safety implications of failing such a test are too drastic and immediate from a safety perspective. If the grandfathered operator fails a retest, FRA proposes to authorize railroads to provide a third chance to pass the test. This second retest can be given at the railroad's option. If the railroad does provide the second retest FRA proposes to require that the second retest occur within no less than 30 days after the first retest. FRA proposes to give other candidates only two chances to pass the test. In these situations the second test must occur within 60 days of the initial test. Repeated test failures will require that the person attend a training program that complies with this rule prior to attempting passage of a second round of testing.

Sections 240.87 and 240.89 require recertification testing on a three year basis and set forth the consequences of failing such recertification tests. Again because of the safety implications of test failure, no railroad will be authorized toallow a person who fails such a test to operate without supervision until they successfully pass the retest. FRA only proposes to permit two opportunities for passing the recertification tests before imposing a duty to obtain retraining prior to seeking additional testing.

Subpart J

This subpart contains FRA's proposals for monitoring and controlling the in-service behavior of certified locomotive operators. In § 240.91 FRA proposes to make unlawful, as a matter of Federal regulation, three types of locomotive operator conduct that are prohibited by carrier operating rulesbut are not currently cognizable as violations of Federal regulation. In each instance FRA is confronted with potential action or inaction by an operator about control of a train which clearly is the direct and immediate responsibility of the locomotive operator and which would reflect a serious failure to be attentive to significant operational safety concerns. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (3) failing to comply with a mandatory directive and entering a segment of track without authority.

FRA proposes to consider speed which exceeds the limits established by timetable, train order or similar mandatory directive by 10 mph or more to be excessive. Similarly, operating a locomotive or train at a rate which exceeds the allowable speed by 50%

regardless of the threshold value for speed would be considered excessive. In this context signals would encompass the same wide range of devices currently employed by the industry and is not limited to automatic roadway signals regulated by FRA in Parts 233, 235, and 236 of the FRA regulations.

Section 240.91 also contains FRA's proposed prohibition against requiring service in excess of that which an operator is allowed to perform by virtue of his or her class of service or familiarity with the physical characteristics of the territory. This section also imposes a duty on an operator to alert the railroad to his or her limitations when being scheduled to operate trains. This provision and § 240.25 address those situations in which a railroad has elected to impose additional limitations on the service a person can perform by providing a mechanism to reinforce such railroad decisions when they are based on a safety rationale.

Section 240.93 contains the requirement that railroads monitor in a specific manner the routine performance of operator conduct. It contains a provision regarding what might be described as check rides and unannounced, covert testing to ensure compliance with significant operational safety requirements. As formulated by FRA it would ensure that each operator receives, on an annual basis, both a check ride and at least one covert unannounced operational test each year.

FRA has reserved § 240.95 for the possibility that it will be convinced by commenters to include in the final rule a requirement that railroads conduct a program of constantly monitoring the eligibility status of certified operators. FRA has included tentative wording for such a requirement to aid commenters in focusing their discussion of the wisdom of adopting such a requirement.

Subpart K

This subpart contains the program records that would be required by this proposed rule. There are basically two typesof documents involved under FRA's proposal. The first is a certificate similar to the motor vehicle driving license carried by most adults. The second involves a variety of file type materials that would contain detailed information that forms the basis for the decision to issue or deny a person the certificate. FRA proposes a uniform period of five years for retention of these records with the exception of the certificate which would have no specific retention factor since its viable duration is obvious on its face.

Section 240.101 contains the proposed requirement to have each railroad issue a certificate to its operators and to have each operator carry or have in his or her possession that certificate while on duty. It also imposes a duty on the operator to display the certificate upon request by proper authorities.

Section 240.105 sets forth the proposed criteria for the document FRA proposes to have each locomotive operator carry while on duty. Basically FRA is proposing that a wallet sized document with the relevant information be issued by each railroad. Among the data would be information about a variety of possible limitations that have been placed on the operator. These could include limits on the operational territory and the need to use a device to improve audio or visual acuity. This section also contains a prohibition against efforts to falsify that certificate.

Section 240.105 also contains the basic requirement that railroads have available the data they rely on when deciding to issue or deny a person a certificate. This section also contains a prohibition against efforts to falsify that supporting data.

Section 240.107 requires railroads to identify individuals who may fit into one or more of three different categories. The first requirement is to identify the individuals the railroad considers to be its supervisor or supervisors of locomotive operators. The second requirement would be to identify the person or persons who will be authorized to sign the railroad's locomotive operator certificates. The third would be to identify the operators who will be deemed qualified under the grandfather provisions of this rule.

Section 240.109 contains a specific set of proposed criteria for documenting the testing data that each railroad would be relying on in its decision making.

Subpart L

Subpart L contains the procedures for resolving allegations that a railroad improperly refused to grant aperson a certification as a locomotive operator or denied that individual recertification. FRA's proposal for these procedures reflects the basic conceptual premise that the certification system being presented permits railroads to have their own more selective criteria for locomotive operators provided that such criteria exceed those established in this rule.

One consequence of that conceptual foundation is that there may be potential bases for allegations that a railroad improperly tested a person to determine acuity levels,knowledge or performance skills which are not properly brought to FRA for review. For example, assertions that an individual railroad's knowledge testing contained a racial bias that discriminated against one or more minorities would constitute achallenge to the program more appropriately resolved by the legal mechanisms designed to handle equal employment opportunity issues. Similarly, a challenge to a determination that an operator lacked the requisite performance skills based on a record of repeated instances of tardy operation of trains according to carrier operating schedules would constitute a challenge that is more appropriately resolved through the dispute resolution procedures of the Railway Labor Act.

FRA proposes to limit its review to those instances in which a railroad denies or fails to certify a person either initially or at a recertification date because the railroad has decided that the individual fails to meet FRA criteria. To facilitate that review FRA proposes to require railroads which are relying on an individual's failure to meet the minimum criteria established by this regulation as the basis for denying certification to state the basis for their determination. That statement must be provided in writing to the individual being deemed unfit and must identify the specific manner in which that individual fails to meet FRA'scriteria. Railroads would be required to furnish that data within 30 days of the decision not issue a person the certificate.

FRA proposes to employ a relatively simple, efficient and expeditious process for resolving these disputes.
Under section 240.111 FRA proposes to create a special internal organization to resolve disputes of this nature. Although actual creation of this organization requires issuance of an internal FRA order, FRA has decided to reflect the existence of the organization and its general composition in this proposed rule to foster better public comprehension of the system FRA envisions under this regulation.

Section 240.113 contains the actual procedures that an aggrieved certification candidate would follow under this proposal. In essence, FRA would require that the person petition FRA for review and initiation of that process would merely require the individual to furnish a written description of the facts and circumstances that serve as the basis for the allegation that the railroad improperly denied certification.

Section 240.115 contains the procedures that FRA would follow upon receipt of the petition. FRA anticipates that most of these disputes will be very

straightforward matters. Thus, FRA proposes to furnish the railroad with a copy of the person's petition and then give the railroad a 30 day response interval. Based on that written record and perhaps a field investigation by FRA regional staff, the FRA review panel will make a decision on the matter. The decision will take the form of either a grant or denial of the petition. Where granting a petition, the FRA review panel will issue an order requiring that a certificate be issued.

Section 240.117 gives the railroad or individual a right to a formal hearing in the proceeding after FRA has made an initial determination. Again very simple procedures are being proposed. Because both the railroad and the individual may have reason to contest the hearing officer's decision, both would have the right to participate in the hearing and any subsequent appeal. Section 240.119 contains the procedures for such hearings. Since FRA anticipates that such hearings only will occur in instances where there are significant factual disputes, FRA proposes to make such hearings relatively formal proceedings. Unlike current FRA procedures for rulemaking and waiver proceedings, these hearings would employ the use of testimony from sworn witnesses, rules of evidence, and cross-examination of witnesses. Following such a hearing, a party aggrieved by the hearing officer's decision could appeal to the FRA Administrator.

Appendices

FRA proposes to include at least three appendices to this rule. In the final rule Appendix A would contain a penalty schedule similar to that FRA has issued for all of its existing rules. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. (see 5 U.S.C.553(b)(3)(A)). Nevertheless interested parties are welcome to submit their views on what penalties may be appropriate.

FRA proposes to place in Appendix B the procedures that a prospective operator must follow to furnish the railroad with information about his or her motor vehicle driving record. FRA also proposes to place in Appendix C the list of participating state motor vehicle licensing agencies that can directly furnish data to operator candidates. Since, as noted earlier, there are multiple advantages when operator candidates can complete the task of obtaining data by contacting a single entity, FRA proposes to make that the preferred practice under this rule.

FRA has reserved a space for a fourth possible appendix on possible performance testing criteria. In this notice FRA has provided only an outline of what types of concerns the appendix might cover if FRA becomes convinced that the need for standardization requires greater FRA intervention. As noted earlier, FRA is not proposing to set detailed criteria for the actual conduct of the performance skill tests. However, this appendix would provide an example of how a form could be devised to assist in promoting uniformity in the application of this test.

Regulatory Impact

E.O.12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it initiates a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this proposed rule. It may be inspected and copied at Room 8201, 400 Seventh Street, SW., Washington, DC. Copies may be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation identifies total estimated potential benefits, from avoidance of accidents and incidents, of $325 million and total estimated costs of $66 million over a twenty year period that can be associated with adoption of this proposal. Both benefits and costs are stated at a discounted present value (10% discount factor) for a program life of 20 years using constant 1988 dollars. The 20 year estimated program life appears reasonable given the relatively long tenure of locomotive operators, the useful life of any equipment used for this rule's purposes and the recurring costs assumed over the life of the program.

There are two points that bear mention concerning FRA's economic evaluation. In determining the quantifiable benefits from the proposed rule, FRA selected accidents that occurred during the period 1977 through 1987 which were caused by human factors that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Within the 18,140 human factor caused accidents reported during the period, FRA identified a total of 6,990 train accidents that resulted in 61 fatalities, 1482 personal injuries and some $325 million in property damage which can be ascribed to poor locomotive operator performance. Within those accidents were 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and an additional 171 due to improper use of the independent brake valve. These appear to stem from poor performance curable through improved training. Also within that total are some 1649 accidents attributed to excessive speed and 3375 caused by excessive in-train force levels that may not be as directly related to training. The difficulty that FRA encountered in analysis of the data involves the absence of specific information that indisputably identifies inadequate training as a causal factor.

This data problem resulted in FRA encountering difficulty in reliably estimating a specific effectiveness level for accident avoidance that could be employed in estimating the benefits associated with adoption of this rule. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. In essence, accident investigation data in the railroad industry at times reflect a conclusion that locomotive operators did not take effective action. The investigations generally do not isolate whether that stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although data limitations do not make it possible for FRA to reliably estimate a specific level of effectiveness for this rule, it would only require about a 20% realization of the potential benefits to make this proposed rule economically justified. FRA believes that such a level of realization is achievable.

Regulatory Flexibility Act

FRA certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. These rules would apply to railroads and individuals seeking to operate locomotives for such railroads. Although a substantial number of small railroads would be subject to this regulation, the economic impact of this rule would not be significant for several reasons. Small railroads historically have not elected to train their own operators and thus generally would not incur the training costs associated with this proposed rule.

Thus, the only costs that a small railroad normally would incur are those associated with routine administration of the certification program. Since small railroads individually and in the aggregate employ only a few locomotive operators, FRA concludes that this economic impact would not be significant. As noted, FRA estimates that roughly 34,000 locomotive operators are currently in service. Each of these individuals could be expected to incur some nominal expenses under this rule. Every three years, each operator would be required to pay a fee of less than $10 for furnishing motor vehicle driver's license data. This fee reflects the costs associated with getting a document notarized and state motor vehicle agency documentation charges.

The proposed rule would have no direct impact on small units of government, businesses or other organizations. State rail agencies will be free to participate in the administration of this program but are not required to do so. State motor vehicle driver's licensing agencies can anticipate on a nationwide basis that they will annually receive 10,000 additional requests for motor vehicle driver's licensing data. Since such state agencies' costs are reimbursed through fees paid by the person making the data request, this proposed rule would not have a direct adverse economic impact on these agencies.

FRA specifically requests comment on the impact of this proposed rule on small entities. It welcomes any suggestions for incorporating alternate strategies to further reduce any impact on small railroads.

Paperwork Reduction Act

There are collection of information requirements contained in this proposed rule. In accordance with the Paperwork Reduction Act of 1980, the proposed requirements are being submitted to the Office of Management and Budget for approval. FRA has endeavored to keep the burden associated with this proposal as simple and as minimal as possible for such a program. For some entities that already have similar programs in place, the burden created will be minimal. For others, the burden could be extensive.

There are significant variables in the time required to comply with these requirements. Thus a total overall estimate of the reporting burden is not easily arrived at and could be seriously misleading. FRA, therefore, has elected to identify each of the proposed sections that contain information collection requirements and indicate the time estimated to fulfill each requirement. All of these estimates include time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Proposed section	Brief description	Estimated average time
240.7	Petition for a waiver of compliance	1 hour each.
240.11, 240.21 & 240.107	Certification & Recertification	1 hour each person.
240.31 & 240.107	Grandfather Certification	1 hour each person.
240.41 & 240.45	Medical Examiner Certification	1 hour each person.
240.51 & Appendix B	Obtaining and Reviewing prior employment information	1 hour per person.
	Obtaining motor vehicle driving records	3 hours per person.
	Review and Verification of motor vehicle record submitted by State agency and NDR.	1 hour per person.
	Written response to adverse record	1 hour each.
240.57 & 240.59	Evaluation of prior conduct information	2 hours each.
240.61	Training program approval	10 hours per railroad.
240.65 & 240.67	Development of supplemental training programs	40 hours per railroad.
240.73	Development of knowledge test	40 hours per railroad.
240.71, 240.75, 240.77 & 240.107	Taking that knowledge test	2 hours per person.
240.81, 240.85, 240.87 & 240.107	Conduct of skill performance test	6 hours per person.
240.93 & 240.107	Conduct of operational monitoring program	6 hours per person.
240.101	Design of Certificate	30 minutes per railroad.
	Filling out the certificate	1 hour per person.
240.103	Maintain supporting information	30 minutes per person.
240.105	Identification of supervisors	1 hour per railroad.
240.113	Review petition	30 minutes per person.
240.115	Railroad response to Review Board	10 hours each.
240.117	Formal Hearing Requests	5 hours each.

FRA solicits comments on the accuracy of the FRA estimates, the practical utility of the information, and alternative methods to obtain this information that might be less burdensome. Persons desiring to comment on this topic should submit their views in writing to FRA and to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: FRA Desk Officer, Washington, DC 20503.

The costs estimated to be associated with the proposed information collection requirements are contained in the draft regulatory evaluation. As stated earlier, FRA solicits comments and will consider alternative procedures for obtaining information concerning a certification candidate's driving record, specifically in accessing the National Driver's Register. FRA is particularly interested in ideas that would minimize use of the NDR during the early years of this program. For example, should FRA modify the requirement for performing such NDR checks to only those instances in which the operator candidate remains eligible for certification based on the data available from the state or states of licensure. Viable commenter suggestions will be considered together with the alternatives identified to date including: (1) Employing a longer interval for recertifications (e.g. five years instead of three years); (2) reliance on voluntary disclosure or evidence of insurability; or (3) a combination of alternatives (e.g. use of voluntary disclosure by the candidate with random checks of the NDR or some other method to police the validity of self reporting).

Environmental Impact

FRA has evaluated this proposed regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and related directives. This proposed regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This proposed rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 240

Railroad safety, Railroad operating procedures.

Request for Public Comments

FRA proposes to adopt a new part 240 of title 49 of the Code of Federal Regulations, as set forth below. FRA solicits comment on all aspects of this proposed rule whether through written submissions, or participation in the public hearings, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposal

Therefore, in consideration of the foregoing, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

1. By revising Part 240 to read as follows:

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE OPERATORS

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342 and 1.49 (m).

Subpart A—General

§ 240.1 Purpose and scope.

This part prescribes minimum requirements for the training, qualification, and certification of all operators of locomotives. Each railroad may prescribe additional or more stringent requirements for its locomotive operators.

§ 240.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) rapid transit operations in an urban area that are not connected with the general system of transportation; and

(2) a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

§ 240.5 Definitions.

As used in this part—

(a) *Alcohol* means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture or preparation containing ethyl alcohol.

(b) *Class Instructor* is a person who has been selected by a railroad to teach others and who has demonstrated to that railroad a knowledge of the subjects under instruction adequate to fulfill the responsibilities of that position.

(c) *Controlled Substance* has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be

revised from time to time (21 CFR parts 1301–1316).

(d) *Current Employee* is any employee with more than one year of experience in transportation service on that railroad or another railroad.

(e) *Designated Supervisor of Locomotive Operators* is a person who:

(1) Is a supervisory employee of the railroad,

(2) Is fully qualified to operate trains in road service, and

(3) Has a minimum of three years experience as a fully qualified locomotive operator performing road train service.

(f) *EAP Counselor* means a person qualified by experience, education or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

(g) *FRA Representative* means the Associate Administrator for Safety, FRA, and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under part 212 of this chapter.

(h) *Instructor Operator* means a person who:

(1) Is a qualified locomotive operator under this part;

(2) Has been selected by the railroad to teach others proper train handling procedures; and

(3) Has demonstrated an adequate knowledge of the subjects under instruction.

(i) *Joint Operations* means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of:

(1) Contractual arrangement between the railroads,

(2) Order of a governmental agency or a court of law, or

(3) Any other legally binding directive.

(j) *Knowingly* means having actual knowledge or the knowledge presumed to be possessed by a reasonable person who acts in such circumstances including knowledge obtained from the exercise of due care.

(k) *Locomotive* means a piece of on-track equipment, other than hi-rail or specialized maintenance equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passengers or both; or

(3) Without propelling motors but with one or more control stands.

(l) *Locomotive operator* means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

(1) a person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as defined in 49 CFR 218.5 (f); or

(2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

(m) *Medical examiner* means a person licensed as a doctor of medicine, doctor of osteopathy, or as a physician's assistant.

(n) *Newly Hired Employee* is any person who is hired with no prior railroad experience, or one with less than one year of experience in transportation service on that railroad or another railroad.

(o) *Railroad* means all forms of non-highway ground transportation that run on rail or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(p) *Railroad Officer* means any supervisory employee of a railroad.

(q) *Segment* means any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer.

(r) *Type 1 Simulator* means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially illustrates the route to be taken;

(3) Graphically and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train-force levels throughout the train; and

(4) Is computer enhanced so that it can be programed for specific train consists and the known physical characteristics of the line pictorially illustrated.

(s) *Type 2 Simulator* means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train-force levels throughout the train; and

(4) Is computer enhanced so that it can be programed for specific train consists and the known physical characteristics of the line pictorially illustrated.

§ 240.7 Waivers.

(a) Any person may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, he or she may grant the waiver subject to any conditions he deems necessary.

§ 240.9 Consequences for noncompliance.

(a) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250, but not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a

separate offense. Appendix A contains a schedule of civil penalty amounts used in connection with this rule.

(b) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety sensitive service in accordance with part 209 of this chapter.

(c) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who knowingly and wilfully falsifies any record required by part in violation of § 240.103 or § 240.105 may be subject to criminal penalties under the provisions of 45 U.S.C. 438.

Subpart B—Railroad Responsibilities

§ 240.11 Qualified operators required.

(a) After _____, no railroad subject to this part shall permit or require any person to operate a locomotive unless that person is certified as a qualified operator under the provisions of this part and has been issued a certificate that complies with the provisions of § 240.101.

(b) At an interval of not to exceed thirty six months, each railroad shall recertify that an individual is a qualified locomotive operator. That interval shall be measured from the date of the initial certification or from the date of each subsequent recertification.

(c) If a railroad relies on a certification made by another railroad, under the provisions of subpart C of this part, the interval shall be measured from the date the first railroad rendered its decision.

(d) Except where interim determinations may be made under subpart D of this part, in order to certify or recertify any person as a qualified operator, each railroad shall make the determinations required by subpart C of this part.

§ 240.13 Designation of classes of operator services.

(a) Each railroad shall designate in its certificate which of the five classes of operations, provided for in paragraph (b) of this section, that it determines an individual is qualified to perform.

(b) There shall be five classes of qualified operators:

(1) Unlimited train service operators,

(2) Terminal train service operators,

(3) Restricted train service operators,

(4) Locomotive servicing operators, and

(5) Student operators.

(c) The following operational constraints apply to each class of operator certificate:

(1) Unlimited train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them during any train operations including those that exceed the limitations for movements prescribed for Terminal and Limited train service operators.

(2) Terminal train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them during operations that are limited to switching cars, making up and breaking up trains, and the movement of trains where the movements do not exceed the definition of a yard or transfer train movement contained in 49 CFR 232.13(e)(1).

(3) Restricted train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them provided that during operations:

(i) Speeds do not exceed 20 mph;

(ii) No more than 30 cars are coupled to the locomotive(s) at any one time; and

(iii) No more than one train is being operated on the same line segment.

(4) Locomotive servicing operators may only operate locomotives singly or in multiples but may not move cars.

(5) Student operators may only operate under direct and immediate supervision of an instructor operator.

§ 240.15 Exceeding classification limits prohibited.

No railroad shall permit or require a certified locomotive operator to perform a type of service that exceeds the limits as set forth in § 240.13 for his or her operational classification.

§ 240.17 Additional limitations on service.

(a) Each railroad is authorized to impose additional operational restrictions on the service a qualified train service operator may perform beyond those identified in § 240.15.

(b) No railroad shall permit or require a locomotive operator to operate a locomotive or train that would cause that person to exceed such additional operational restrictions imposed by the railroad.

§ 240.19 Familiarization with physical characteristics.

(a) No railroad shall permit or require a certified locomotive operator to operate a locomotive or train over its operational territory or any segment of that territory unless that person has demonstrated familiarity with the physical characteristics of the relevant operational territory.

(b) The following actions constitute demonstrating familiarity with the physical characteristics:

(1) Operation of trains over the entire territory prior to the effective date of this rule (for operators covered by subpart D) or as part of a training program (for student operators), provided that no more than one year has elapsed since the person last operated a train over the territory; or

(2) Attendance at a supplemental training program that complies with § 240.67(a).

Subpart C—Basis for Qualification Determinations

§ 240.21 Qualification determinations required for operators.

(a) Except where the interim certification permitted by subpart D of this part applies, prior to certifying any individual as an operator for any class of service, each a railroad shall determine:

(1) That the individual meets the visual and hearing acuity standards of § 240.43; and

(2) That the individual meets the eligibility requirements of § 240.57;

(b) In addition to complying with paragraph (a) of this section, prior to certifying any individual as a qualified locomotive servicing operator or any class of train service operator, each railroad shall determine:

(1) That the individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.71 or § 240.77;

(2) That the individual has the necessary operating performance skills which have been established for the class of service which that person will be performing, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.81 or § 240.87; and

(3) That the individual is familiar with the physical characteristics of the territory on which he or she will operate in accordance with the requirements of § 240.19; and

(4) Except with regard to operators who are being recertified, that the individual has successfully completed a training program under § 240.63 for the class of service he or she is being certified for.

(c) A railroad may certify a student operator as either a locomotive servicing operator or a train service operator without further review of their medical or driver records required under paragraph (a) of this section if:

(1) The person successfully completed a training program that complies with §§ 240.61 and 240.63; and

(2) A period of not more than twenty-four months has elapsed since the student operator certification was issued.

§ 240.23 Qualification determinations required for operators performing in joint operations territory.

(a) Each railroad that is responsible for controlling the conduct of joint operations with another railroad may certify a person as a qualified locomotive operator for the purposes of joint operations either by making the determinations required by § 240.21 or by relying on the certification issued by another railroad under that section.

(b) If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:

(1) That the person has been certified as a qualified operator under the provisions of this part by the railroad which employs that individual;

(2) That the person certified as a locomotive operator by the other railroad has the necessary knowledge concerning the controlling railroad's operating rules;

(3) That the person certified as a locomotive operator by the other railroad has the necessary operating skills concerning the joint operations territory; and

(4) That the person certified as a locomotive operator by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory.

§ 240.25 Reliance on determinations by other railroads.

After ____, any railroad that is considering certification of an individual as a qualified operator may give full faith and credit to determinations made by another railroad concerning that person's qualifications provided that:

(a) Those determinations are current within the provisions of § 240.11;

(b) The person receives training on and visually observes the physical characteristics of the new territory in accordance with § 240.67; and

(c) The person has the necessary knowledge concerning its operating rules.

§ 240.27 Reliance on other qualification requirements.

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this Part, that a locomotive operator is a qualified operator provided it determines that:

(1) The operator is employed by the Canadian railroad; and

(2) The operator meets or exceeds the qualifications standards of the Canadian Transport Commission for such service.

(b) Any Canadian railroad that is required to comply with this regulation may certify that a locomotive operator is a qualified operator for the purpose of compliance with this part provided it determines that:

(1) The operator is employed by the Canadian railroad; and

(2) The operator meets or exceeds the qualifications standards of the Canadian Transport Commission for such service.

Subpart D—Interim Qualification Presumed

§ 240.31 Interim presumption of qualifications (grandfathering of existing operators).

(a) Each railroad in operation on _____ (the effective date of this rule), may certify that any individual employed by it on that date is a "qualified operator" for the purpose of compliance with this part, provided that the railroad:

(1) Has previously considered that person qualified to operate a locomotive on the basis of that person's training or experience; and

(2) Identifies that person in accordance with § 240.107, including identification of the class or type of service that person is considered qualified to perform in accordance with those established in § 240.13.

(b) No railroad shall permit or require a grandfathered operator to perform locomotive or train service duties after that date (i.e., 36 months after the effective date of this rule) unless that person has been determined to be qualified in accordance with procedures that comply with § 240.21.

§ 240.33 Interim presumptions for joint operations.

(a) Each railroad which controls joint operations and is in operation on the effective date of this rule, may certify that an individual is a qualified operator for joint operational purposes provided that:

(1) This person is employed by another railroad on that date;

(2) This person is deemed by the employing railroad to be a "qualified operator" under the provisions of this part;

(3) The railroad responsible for the control of the joint operations has previously considered this person qualified to operate a locomotive on its trackage; and

(4) The railroad identifies this person in accordance with § 240.107.

(b) No railroad shall permit or require an operator certified under paragraph (a) of this section to perform locomotive or train service after _____ (i.e., 36 months after the effective date of this rule) unless that person has been determined to be qualified in accordance with the requirements of subpart C of this part.

Subpart E—Medical Qualification Decisions

§ 240.41 Determinations required.

(a) Each railroad shall determine that any individual it certifies under § 240.11(a) to be a qualified locomotive operator has visual acuity and hearing acuity that meets or exceeds the levels prescribed in § 240.43.

(b) In order to make the determination required under paragraph (a) of this section, the certifying railroad shall possess a medical examiner's certificate that the individual has been medically examined and meets these acuity standards.

§ 240.43 Acuity standards.

(a) Each locomotive operator shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses, or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of signals.

(b) Each locomotive operator shall have hearing acuity that meets or exceeds the following thresholds:

(1) If tested by use of an audiometric device (calibrated to American National Standard Z24.5–1951), the person does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid; or

(2) If tested without use of an audiometric device, the person perceives a forced whisper in the better ear at not less than 5 feet with or without use of a hearing aid.

§ 240.45 Acuity examinations required.

(a) Any examination required for compliance with § 240.43 shall be performed by a medical examiner except that

(1) A licensed optometrist may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed audiologist may perform the portion of the examination that pertains to hearing acuity.

(b) The examination required for compliance with § 240.41 shall be performed within 90 days preceding and at the same intervals as that prescribed for the initial certification and any subsequent certifications made in compliance with § 240.11.

(c) The results of the examination shall be documented in writing and either the original or a copy shall be maintained by the railroad under the provisions of § 240.105.

(d) If the examination discloses that the person needs either corrective lens and/or a hearing aid to meet the thresholds acuity levels established in § 240.43, that fact shall be noted on the certificate issued under the provisions of § 240.101 and the operator shall wear the relevant device while operating a locomotive or train.

Subpart F—Eligibility Decisions

§ 240.51 Railroad's duty to obtain and evaluate information concerning prior conduct.

(a) Each railroad shall obtain information concerning the prior conduct of an individual before making a certification or recertification decision under subpart C of this part. The information shall include data concerning that person's prior conduct as a railroad employee and the prior conduct of that individual as an operator of a motor vehicle during the 60 months preceding this evaluation.

(b) Nothing in this section shall be deemed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a qualified locomotive operator.

(c) Each railroad shall evaluate the information obtained in accordance with paragraph (a) of this section and determine that any person it certifies under the provisions of subpart C as a qualified operator meets the eligibility requirements prescribed in § 240.57.

(d) Each railroad shall review the information it has compiled concerning a prospective operator's conduct as its employee and/or the information furnished by any other railroad, if the prospective operator was employed by any another railroad.

(e) All information concerning an individual's prior railroad employment conduct that a railroad will consider in making an eligibility determination under this subpart shall be reduced to writing prior to its being considered by the railroad.

(f) Each railroad shall review:

(1) The information compiled by any state agency that issued or reissued the prospective operator a motor vehicle driver license in the last five years and furnished by the agency in accordance with § 240.52(b)(1);

(2) The information furnished as the result of the National Driver Register check performed in accordance with § 240.52(b)(2); and

(3) The information furnished as the result of compliance with paragraph (g) of this section, if the National Driver Register check reveals the existence of additional information, provided by a state agency other than the state agency or agencies that issued the prospective operator a license within the last 5 years which potentially relates to the prospective operator.

(g) If it receives information from a driver licensing agency or the National Highway Traffic Safety Administration, as the result of performance of a National Driver Register check in compliance with § 240.52(b)(2), that additional information may exist in the files of a state agency not contacted under § 240.52(b)(1) concerning a person being considered for certification or recertification, a railroad shall

(1) Request, in writing, that the chief of the driver licensing agency or agencies which compiled the information provide a copy of that agency's available information concerning the prospective operator to the railroad;

(2) Take any additional action required by State or Federal law to obtain that additional information concerning the prospective operator's driving record; and

(3) Upon receipt of that additional information, verify that the information does relate to the prospective operator through comparison of physical description, photographs or handwriting comparisons.

(h) Prior to evaluating any records concerning prior conduct by an individual obtained in compliance with this section, each railroad shall give the person seeking to be certified an opportunity to review such record or records if that record(s) contains information of the type identified in §§ 240.53 and/or 240.55 which could provide a basis for determining that the individual does not meet to eligibility criteria of § 240.57.

(i) Any person who must be given access to a record or records under paragraph (h) of this section shall be given an opportunity to comment on that record(s) in writing, if the person so desires prior to the railroad's evaluation of the record(s). Any such comment shall be retained by the railroad in accordance with § 250.103.

240.52 Individual's duty to furnish motor vehicle operator licensing records.

(a) Each person seeking certification or recertification under this part shall:

(1) Take the actions required by paragraphs (b) through (f) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent, required by State or Federal law to make information concerning his or her driving record available to that railroad.

(b) Each person seeking certification or recertification under this part shall:

(1) Request, in writing, that the chief of the driver licensing agency, identified in paragraph (c) of this section, provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other state or states that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 in accordance with the procedures contained in Appendix B unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix C.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix C, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of

additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) Any person who has never obtained a motor vehicle driving license shall notify the railroad of that fact in writing and is not required to comply with the provisions of paragraph (b).

(g) The request required for compliance with paragraph (a) of this section shall be performed within the 90 days preceding and at the same interval as that prescribed for the initial certification and any subsequent certifications made in compliance with § 240.11 of this part.

§ 240.53 Limitations on consideration of motor vehicle licensing data.

(a) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 60 months before the month in which the railroad is making its certification decision.

(b) A railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle drivers license for operating a motor vehicle while under the influence of or impaired by, alcohol or a controlled substance;

(2) A conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle driver's license for refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(3) A conviction for any of the following serious traffic violations:

(i) Excessive speeding involving any charge of operating at more than 15 miles per hour or more above the posted speed limit;

(ii) Reckless driving, as defined by State law, local law or regulation;

(iii) A moving violation of State law or local law arising in connection with a fatal traffic accident; and

(iv) Driving with a revoked or suspended license.

(c) No railroad shall assign numerical weights for the purposes of § 240.57 to motor vehicle incidents of the type identified in paragraphs (b)(1) and (b)(2) of this section, if:

(1) An EAP counselor conducts a review under the provisions of § 240.59; and

(2) The EAP counselor finds that the event(s) was followed by an appropriate course of counseling or treatment

(d) The individual seeking certification or recertification has the burden of convincing the EAP counselor of the nature, duration and effectiveness of that counseling and the finding of the EAP counselor will not be disturbed.

§ 240.55 Limitations on consideration of railroad employment data.

(a) When evaluating a person's railroad employment record a railroad shall not consider information concerning prior railroad performance of safety duty incidents that occurred more than 60 months before the month in which the railroad is making it's certification decision.

(b) A railroad shall only consider information concerning the following types of safety duty incidents:

(1) Any finding that the person used or possessed alcohol or a controlled substance while assigned by a railroad to perform service;

(2) Any finding that a person reported for, went on, or remained on duty in covered service while under the influence of or impaired by alcohol or a controlled substance;

(3) Any finding that a person refused to cooperate in providing a blood or urine sample as required by part 219 of this chapter;

(4) Any finding that a person, while performing service as a locomotive operator was responsible for

(i) Permitting a locomotive or train to operate at a speed that exceeded the maximum authorized limit by 10 miles per hour or more or exceeded the maximum speed by more than one half of the authorized speed, which ever is less;

(ii) Permitting a locomotive or train to pass any signal that requires a complete stop before passing it;

(iii) Failing to comply with any mandatory directive by entering a segment of track without authority; and

(iv) Failing to comply with the prohibitions of part 218 of this chapter by wilfully tampering with a safety device.

(5) Any finding that, while performing service related to the operation of trains and directly responsible for compliance, a person failed to comply with any mandatory directive concerning the operation of a train that involved any of the following:

(i) Operation of a locomotive or train at a speed that exceeded the maximum authorized limit by 10 miles per hour or more than half of the authorized speed;

(ii) Permitting a locomotive or train to pass any signal that requires a complete stop before passing it;

(iii) Entering a segment of track without authority;

(iv) Failure to protect a locomotive or train as required by a carrier operating rule that is consistent with 49 CFR 218.37;

(v) Misalignment of a switch or operation of switch under a train;

(vi) Failure to secure a handbrake or a sufficient number of handbrakes; and

(vii) Failure to comply with the prohibitions of part 218 of this chapter by wilfully tampering with a safety device.

(c) No railroad shall assign numerical weights for the purposes of § 240.57 to railroad performance of safety duty incidents of the type identified in paragraph (b) of this section, if:

(1) An EAP counselor conducts a review under the provisions of § 240.59; and

(2) The EAP counselor finds that the event(s) was followed by an appropriate course of counseling or treatment

(d) The individual seeking certification or recertification has the burden of convincing the EAP counselor of the nature, duration and effectiveness of that counseling and the finding of the EAP counselor will not be disturbed.

§ 240.57 Railroad evaluation of the consequences of adverse information.

(a) Except for incidents for which an EAP counselor has made a finding of acceptable counseling or treatment under § 240.59, any incident identified in either paragraphs (b)(1) or (b)(2) of § 240.53 or § 240.55, shall be assigned a value of 3 points for the purpose of evaluating their significance under this part.

(b) Any incident identified in § 240.53 (b)(3) shall be assigned a value of two points for the purpose of evaluating their significance under this part.

(c) Each railroad shall evaluate the significance of any such incidents in accordance with the following provisions:

(1) Any individual who has accumulated less than six points shall not determined to be ineligible to be a locomotive operator under this part;

(2) Any individual who has accumulated six points may be determined to be eligible to be a locomotive operator but that certification shall be conditioned on adherence to requirements imposed in compliance with § 240.59;

(3) Any person who has accumulated more than six points shall be determined to be ineligible to be a locomotive operator under this part until 5 years have elapsed since the occurrence of the most recent incident; and

(4) Any person who has accumulated more than six points and this is the second time that the individual has accumulated more than six points, shall be determined to be ineligible under this part.

§ 240.59 Conditional certifications.

(a) Any person who has been involved in any incident identified in paragraphs (b)(1) or (b)(2) of § 240.53 and/or paragraphs (b)(1) through (3) of § 240.55 shall not be certified as a locomotive operator until that person has been evaluated by an EAP counselor to determine:

(1) If the incident was followed by an appropriate course of counseling or treatment; and

(2) If the person is currently affected by a psychological or physical dependence on one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation.

(b) Prior to being certified any person identified in paragraph (a)(2) of this section shall have successfully completed any course of counseling or treatment determined to be necessary by the EAP counselor prior to performing any service as a locomotive operator as provided for under part 219 of this chapter.

(c) Any person identified in paragraph (b) of this section who is being certified under this section shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and provided for under part 219 of this chapter.

(d) Any person who has accumulated six points because of having been involved in multiple incidents identified in § 240.53 and/or § 240.55 shall not be certified as a locomotive or train service operator until that person has completed a training program that meets or exceeds the requirements contained in § 240.63.

Subpart G—Training Programs

§ 240.61 Structure and approval of training programs for student locomotive operators.

(a) After _____, any railroad that conducts a training program to qualify a person as a locomotive operator shall have a program that:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components that meet or exceed the requirements of § 240.63; and

(2) Includes both knowledge testing that complies with § 240.71 and performance skill testing that complies with § 240.81.

(b) Each railroad to which paragraph (a) of this section applies shall submit a detailed description of that training program to the Federal Railroad Administration for approval within the following intervals:

(1) If the training program is in existence on the effective date of this rule, the railroad shall file that program description no later than ninety days after the effective date of the rule and have available for inspection a copy of its instructional materials; or

(2) If the training program is not in existence on the effective date of this rule, the railroad shall file that program description at least ninety days prior to initiation of any instructional effort based on that program and have available for inspection a copy of its instructional materials.

(c) Each railroad shall be notified in writing upon approval or disapproval of its program. Approval shall be presumed, if the Federal Railroad Administration has not notified the railroad in writing of disapproval within sixty days after the program is filed.

(d) The Federal Railroad Administration reserves the right to revoke any approval, whether express or implied, if it subsequently determines that the program does not comply with the requirements of § 240.63.

§ 240.63 Content and duration of student training programs.

(a) For the purposes of this section the categories identified in this paragraph refer to the minimum training to be afforded a person seeking to perform the following types or class of service:

(1) "Category A" is for individuals who are seeking to become unlimited train service operators and thus perform operations that exceed the operational limitations for locomotives and trains contained in the Category B, C, and D operations.

(2) "Category B" is for individuals who are seeking to become terminal train service operators and thus perform operations that are limited to switching cars, making up and breaking up trains, and the movement of trains where the movement does not exceed the definition of a yard or transfer train movement as contained in the Power Brake Law, 49 CFR 232.13(e)(1).

(3) "Category C" is for individuals who are seeking to become locomotive servicing operators and thus perform operations that are limited to moving locomotives, without cars attached, over yard and main tracks between the locations where the locomotives are repaired or maintained, and the locations where the locomotives are put into or removed from road or yard service;

(4) "Category D" is for individuals who are seeking to become restricted train service operators and thus perform operations that are limited to the movement of locomotives and trains at speeds not exceeding 20 mph; with trains of less than 30 cars; and do not occur on line segments where more than one train at a time is operated.

(b) The classroom component of the program required under § 240.61 shall:

(1) Be conducted under the supervision of a qualified class instructor;

(2) Be subdivided into segments or periods of appropriate duration to effectively cover the subject matter areas identified in paragraph (b)(4) of this section;

(3) Involve the use of actual on-track equipment during less than one-half of the duration of the subject matter training period; and

(4) Meet the minimum duration for the category of service in which the person will be certified as specified in the following chart:

Subject	Minimum duration (in hours) of training for each operational class of service category			
	A	B	C	D
Personal safety, newly hired employees only	40	40	40	24
Operating rules	40	40	20	20
Mechanics	24	12	12	12
Air brakes (includes brake tests)	24	16	12	12
Train handling	30	16	8	16
Hazardous materials emergency response	16	16	8	8
Other Federal regulations, locomotive inspection, hours of service, drug and alcohol, radio procedure	16	16	16	16
Administrative matters	8	8	8	8
Total (current employees)	158	128	84	92
Total (newly hired)	198	168	124	116

(c) The performance skill component of the training program shall:

(1) Be conducted under the supervision of a qualified instructor operator located in the same control compartment,

(2) Be conducted so that the student operator is at the controls of a locomotive for at least one half of the time,

(3) Be conducted so that the student experiences whatever variety of types of

trains are normally operated over the territory; and

(4) Meet the minimum duration for the category of service in which the person will be certified provided that each student shall be given the minimum total of actual train operation (i.e., combined actual and simulator operation) that is identified in the following chart:

	Minimum duration (in hours) of training for each operational class of service category			
	A	B	C	D
Performance skill training (includes physical characteristics familiarization)	480	240	60	60

(d) The minimum duration for the performance skills training identified in paragraph (c) of this section may be satisfied through the use of simulator training in accordance with the provisions of paragraphs (e), (f) and (g) of this section.

(e) If training on a simulator is substituted for a portion of the actual train operation experience when teaching performance skills, each student shall be given the minimum period of actual train operation that is identified in the following chart:

Type of simulator being substituted	Minimum period of actual train operations for each class of service			
	A	B	C	D
Type 1 simulator	240	120	30	30
Type 2 simulator	360	180	60	60

(f) One hour of training on a Type 1 simulator can be counted as up to 5 hours of total train operation experience.

(g) One hour of training on a Type 2 simulator can be counted as up to 2 hours of total train operation experience.

(h) The familiarization with physical characteristics component of the training program shall:

(1) Be conducted while the student operator is operating under the supervision of a instructor operator; and

(2) Be conducted so that the student operator is at the controls of a locomotive while making at least three round trips over the entire territory across which the student will be authorized to operate.

(i) Nothing in paragraph (h) of this section shall prevent training from being provided directly by a railroad other than that which employs the student operator's employing railroad or training by a non-railroad entity provided that the employing railroad complies with § 240.65.

§ 240.65 Supplemental training required.

(a) Each railroad to which this part applies shall make available to locomotive operators an educational training program that complies with § 240.67 of this part.

(b) The educational training program required by this section shall be made available when any of the following events occur:

(1) A locomotive operator is being authorized or directed by the railroad to operate over territory across which he or she has not previously performed locomotive operator service;

(2) A locomotive operator is being authorized or directed by the railroad to operate over territory across which he or she has not operated as a locomotive operator in more than 365 days;

(3) A locomotive operator is being authorized or directed by the railroad to operate a locomotive equipped with significant new technology as defined in § 240.67; or

(4) A period of more than 30 but less than 40 months has elapsed since the locomotive operator received an educational training program that meets the requirements of either § 240.63 or § 240.67.

§ 240.67 Structure, duration and content of supplemental training programs.

(a) Each supplemental training program that is being provided by a railroad, in compliance with paragraphs (b) (1) or (2) of § 240.65, shall

(1) Be designed to provide a locomotive operator with familiarity with the physical characteristics of the territory across which the operator is being or will be authorized to operate; and

(2) Result in that individual operating at least three round trips over the territory while at the controls of a locomotive and accompanied by an operator already familiar with and qualified on that territory.

(b) Each supplemental training program that is being provided by a railroad, in compliance with paragraph (b)(3) of § 240.65, shall be designed to provide a locomotive operator with familiarity with new technology and of sufficient duration to teach the operator how to properly perform his or her assigned responsibilities concerning that technology.

(c) Each supplemental training program that is being provided by a railroad, in compliance with paragraph (b)(4) of § 240.65, shall comply with the following:

(1) At a minimum, each operator will receive 8 hours of instruction;

(2) The instruction will be provided in a classroom type setting; and

(3) The subject matter covered will include:

(i) Good personal safety practices,

(ii) Relevant operating practices,

(iii) Relevant mechanical inspection practices,

(iv) Proper airbrake inspection procedures,

(v) Proper train handling procedures, and

(vi) Proper procedures for handling hazardous materials.

Subpart H—Testing Operator Knowledge

§ 240.71 Initial testing required.

(a) No railroad shall certify a person as a qualified locomotive servicing operator or a train service operator under the provisions of §§ 240.21 or 240.23 unless that person has taken and passed a knowledge test that complies with § 240.73, except as provided for in paragraph (b) of this section.

(b) A railroad may certify a person as a qualified locomotive servicing operator or train service operator under the provisions of § 240.31 (interim or grandfather basis for qualifications) for a period of not to exceed 36 months from the effective date of this rule without first having taken and passed a knowledge test that complies with § 240.73.

§ 240.73 Criteria for knowledge tests.

(a) Testing under this section shall be designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains.

(b) Each test shall:

(1) Be objective in nature, in written rather than oral form, and cover the following subjects:

(i) Personal safety practices;

(ii) Operating practices;

(iii) Equipment inspection practices;

(iv) Train handling practices; and

(v) Compliance with Federal safety rules.

(2) Be sufficient to:

(i) Effectively examine the subjects covered, and

(ii) To accurately measure the person's knowledge; and

(3) In no event contain less than 150 questions.

(c) The minimum passing score for such tests shall be at least 85 percent and no testing shall be done with open reference books or materials.

(d) Any railroad that is testing an individual's knowledge concerning the aspects and indications of operational signals shall have a minimum passing score of 100 percent for the signal portions of such test.

§ 240.75 Consequences of failing initial testing.

(a) *Grandfathered Operators.* If, prior to taking the test, the person being tested has been deemed a qualified operator under the grandfathering provisions of § 240.31, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator for a period of more than 60 days.

(2) During that sixty-day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive as either a locomotive servicing operator or any class of train service operator until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as student operator completing a training program that complies with § 240.61.

(b) Student Operators. If, prior to taking the test, the person being tested has been deemed a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that sixty day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a second training program that complies with § 240.61.

(c) *Other Operator Candidates.* If, prior to being tested, the person being tested has not been deemed either a qualified operator under the grandfathering provisions of § 240.31 or a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that sixty day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve either of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a second training program that complies with § 240.61.

§ 240.77 Recertification testing required.

(a) After _____ each railroad to which this part applies shall administer written tests to all individuals seeking recertification as a locomotive operator.

(b) Testing required in paragraph (a) of this section shall be performed within 90 days preceding and at the same interval prescribed for subsequent certifications made in compliance with § 240.11.

(c) Testing under this section shall be designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains and shall comply with criteria for initial testing established under § 240.71.

§ 240.79 Consequence of failing recertification test.

(a) If the person being tested in compliance with the requirements of § 240.77 fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator for a period of more than 60 days unless that person successfully passes a reexamination within that 60 day interval.

(b) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(c) If the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(d) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(e) If the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

Subpart I—Performance Skills Testing Programs

§ 240.81 Initial testing required.

(a) No railroad shall certify a person as a qualified locomotive servicing operator or a train service operator under the provisions of §§ 240.23 or 240.25 unless that person has taken and passed a performance skills test that complies with § 240.83, except as provided for in paragraph (b) of this section.

(b) A railroad may certify a person as a qualified locomotive servicing operator or train service operator under the provisions of § 240.31 (interim or grandfather basis for qualifications) for a period of not to exceed 36 months from the effective date of this rule without first having taken and passed a performance skills test that complies with § 240.83.

§ 240.83 Criteria for initial testing.

(a) Testing under this section shall be designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform.

(b) Each test required under § 240.81 shall be conducted by a designated supervisor of locomotive operators and shall:

(1) Cover the following subjects during the test period:

(i) Operating practices;

(ii) Equipment inspection practices;

(iii) Train handling practices; and

(iv) Compliance with Federal safety rules;

(2) Be of sufficient length to effectively evaluate the person's ability to operate trains; and

(3) Be conducted when the person is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(c) The observations and evaluation of the designated supervisor of locomotive operators shall be documented in writing by the person conducting the test in accordance with the provisions of § 240.109.

(d) A railroad may substitute the use of a locomotive operations simulator to conduct the testing required under this section if:

(1) A Type 1 simulator is employed for the test, and

(2) The simulator is programmed to provide a test that meets the criteria of paragraphs (a) through (c) of this section.

§ 240.85 Consequences of failing initial testing.

(a) *Grandfathered operators.* If, prior to taking the test, the person being tested has been deemed a qualified operator under the grandfathering provisions of § 240.31, the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator until the person successfully passes a reexamination.

(2) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(3) If the person fails the reexamination, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(4) That second reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the second test.

(5) If the person fails a second reexamination, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

(b) Student Operators. If, prior to taking the test, the person being tested has been deemed a student operator under the provisions of § 240.21 the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit or require that person to continue to operate a locomotive except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that interval, the person must successfully pass a reexamination.

(3) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to demonstrate to a designated supervisor of locomotive operators the ability to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive unless that person is completing a second training program that complies with § 240.61.

(c) Other Operator Candidates. If, prior to taking the test, the person being tested has not been deemed either a qualified operator under the grandfathering provisions of § 240.31 or a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that interval, the person must successfully pass a reexamination.

(3) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the first test.

(4) In the event that the person takes a reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

§ 240.87 Recertification testing required.

(a) After _____, each railroad to which this part applies shall administer performance skills tests to all individuals seeking recertification as a locomotive operator.

(b) Testing required in paragraph (a) of this section shall be performed in the 90 days preceding and at the same interval prescribed for subsequent certifications made in compliance with § 240.11 of this part.

(c) Testing under this section shall be designed to examine a person's

knowledge and skill in applying the railroad's rules and practices for the safe operation of trains and shall comply with criteria for initial testing established under § 240.83 of this part.

§ 240.89 Consequence of failing recertification testing.

(a) If the performance of the person being tested in compliance with the requirements of § 240.87 fails to demonstrate, in the view of the designated supervisor of locomotive operators, that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested fails to convince a designated supervisor of locomotive operators that they are able to safely operate a locomotive or train in the type or class of service for which they are being tested, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator until the person successfully passes a reexamination.

(b) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(c) In the event that the person takes a reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(d) Any additional reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(e) If the person takes a second reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, to convince a designated supervisor of locomotive operators that they are able to safely operate a locomotive or train in the type or class of service for which they are being tested, no railroad shall permit or require that person to operate a locomotive, except as a student operator completing a training program that complies with § 240.61.

Subpart J—Unlawful Behavior by Operators and Operational Monitoring Requirements

§ 240.91 Operator responsibilities.

(a) It shall be unlawful for any locomotive operator, while performing service as a locomotive operator, to:

(1) Permit a locomotive or train to operate at a speed that exceeds the maximum authorized limit by 10 miles per hour or more or exceeds the maximum speed by more than one-half of the authorized speed, whichever is less;

(2) Permit a locomotive or train to pass any signal that requires a complete stop before passing it; or

(3) Fail to comply with any mandatory directive concerning the movement of a train by entering a segment of track without authority.

(b) Each locomotive operator who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty; and

(2) Display that certificate upon the receipt of a request to do so from:

(i) A representative of the Federal Railroad Administration,

(ii) An officer of the issuing railroad, or

(iii) An officer of another railroad when operating a locomotive or train in joint operations territory.

(c) Any locomotive operator who is notified or called to operate a locomotive or train that would cause him or her to exceed the limits set forth in subpart B shall immediately notify the railroad that he or she is not qualified to perform that anticipated service.

§ 240.93 Operational monitoring requirements.

(a) Each railroad to which this part applies shall have a program to monitor the conduct of its locomotive operator by performing both on-board observations and by conducting unannounced tests.

(b) The program shall be conducted so that each locomotive operator shall be given at least one on-board observation by a qualified supervisor of locomotive operators in each calendar year and the duration of the observation shall be equal to at least one half the operator's assigned period of duty.

(c) The program shall be conducted so that each locomotive operator shall be given at least one unannounced test each calendar year.

(d) The unannounced test program shall:

(1) Test operator compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(2) Test operator compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive operator to less favorable conditions than that which existed prior to initiation of the test;

(3) Be conducted that so that the administration of these tests is effectively distributed throughout whatever portion of a 24 hour day that the railroad conducts its operations; and

(4) Be conducted so that individual tests are administered without prior notice to the operator being tested.

§ 240.95 Reserved for possible procedures for oversight responsibilities; revoking or suspending certificates.

(a) Each railroad shall maintain a record of all adverse information evaluated under § 240.57 of this part and shall continually monitor all operators currently certified by it to determine whether those operators have been involved in any additional incidents identified under §§ 240.53 and 240.55.

(b) If at any time during the duration of a certificate a railroad learns that an operator certified by it has been involved in one or more incidents, resulting in that operator accumulating more than six points as provided for under § 240.57, the railroad shall act to revoke or suspend the locomotive operator's certificate as provided for in subsection (c) of this section.

(c) The railroad shall conduct a proceeding to revoke or suspend that certificate either:

(1) Adheres to procedures for a post-suspension proceeding which conforms to the requirements of an applicable collective bargaining agreement, together with the procedures for the adjustment of disputes under section 3 of the Railway Labor Act or

(2) Adheres to the following procedures:

(i) Prior to or upon withdrawing a person from service as a locomotive operator, or prior to revoking or suspending an operator certificate, which ever occurs first, the railroad shall provide notice of the reason for its action and an opportunity for hearing before a presiding officer other than the charging official;

(ii) The hearing shall be convened within the period specified in the applicable collective bargaining agreement or, if there is no agreement, the hearing is convened within 10

calendar days of the effective date of the suspension. (In the event that the locomotive operator is unavailable for the hearing due to injury, illness or other sufficient cause the hearing shall be held within 10 days of the date the person becomes available for the hearing.);

(iii) The hearing determines that the person did in fact operate the locomotive or train or a motor vehicle in a manner identified in §§ 240.53 and/or 240.55 and that revocation or suspension of the person's certificate is the appropriate remedial action.

Subpart K—Program Documentation

§ 240.101 Criteria for the certificate.

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued;

(4) Identify any limitations, including the class of service, that restrict the persons operational authority;

(5) Show the date of its issuance;

(6) Be signed by an individual designated under the provisions of § 240.105; and

(7) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on its certificate or supplementing the certificate through other documents.

(c) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that certificate; or

(2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

§ 240.103 Supporting documents required.

(a) Each railroad that issues a certificate required under § 240.11 shall maintain a record for each person to whom a certificate is issued.

(b) That record shall contain the information relied on in making each of the determinations required by this part.

(c) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that record; or

(2) Otherwise falsify that record through material misstatement, omission, or mutilation.

§ 240.105 Identification of qualified persons.

(a) Each railroad to which this part applies shall identify in writing each person it considers as a designated supervisor of locomotive operators and the basis for that designation.

(b) Each railroad to which this part applies shall designate in writing any person that it considers authorized to sign certificates required by § 240.11 and, if that authorized person is not a designated supervisor of locomotive operators, identify the basis for this authorization.

(c) No later than the effective date of this rule each railroad shall:

(1) Identify, in writing, each person it considers to be a qualified operator under the provisions of § 240.31;

(2) Identify the class of service for which that person is deemed qualified; and

(3) Identify the basis for their designation as a qualified operator.

(d) The records required under this section shall be

(1) Kept available for inspection and copying by FRA representatives; and

(2) Retained for a period of not less than five years after the year in which the record was created.

§ 240.107 Documenting tests.

(a) A copy of any written knowledge test administered under § 240.71 or § 240.77 shall be kept on file for a period of not less than five years after the year in which it was last administered.

(b) Any railroad that employs a designated supervisor of locomotive operators to conduct field evaluation of a person's operating performance skills when administering such testing in compliance with § 240.81 or § 240.87 shall:

(1) Require supervisor to document in writing the relevant operating facts on which the evaluation is based; and

(2) Keep that evaluation on file for a period of not less than five years after the year in which the test was administered.

(c) Any railroad that uses a simulator to conduct evaluation of a person's operating performance skills, when administering such testing in compliance with § 240.81 or § 240.87 shall:

(1) Document the relevant operating facts on which the evaluation is based; and

(2) Keep that evaluation on file for a period of not less than five years after the year in which the test was administered.

(d) All records required under this section shall be made available to FRA representatives upon request.

Subpart L—Dispute Resolution Procedures

§ 240.111 Review board established.

(a) Any individual may petition the Federal Railroad Administration if he or she believes that a railroad failed to comply with this regulation when determining whether he or she is qualified to be a certified locomotive operator under this regulation.

(b) The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Operator Review Board.

(c) The Locomotive Operator Review Board shall be composed of at least three employees of the Federal Railroad Administration selected by the Administrator.

§ 240.113 Petition requirements.

(a) Any person who believes that a railroad has improperly failed or refused to issue them certification or recertification as a locomotive operator may petition the Locomotive Operator Review Board for review of that action.

(b) Each petition shall:

(1) Be in writing;

(2) Be submitted in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

(3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:

(i) The petitioner's full name;

(ii) Current mailing address;

(iii) Daytime telephone number;

(iv) The name and address of the railroad; and

(v) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought; and

(5) Be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision.

§ 240.115 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA and the acknowledgement shall contain the docket number assigned to the petition.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition.

(c) The railroad will be given a period of not to exceed 30 days to submit to FRA any information that the railroad considers pertinent to the petition.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding;

(2) Provide a copy of the information being submitted to FRA to the petitioner.

(e) Each petition will then be referred to the Locomotive Operator Review Board for a decision.

(f) The Board will determine whether the denial of certification or recertification was improper and grant or deny the petition accordingly.

(g) Notice of that decision will be provided in writing to both the petitioner and the railroad.

§ 240.117 Request for a hearing.

(a) If adversely affected by the decision, either the original petitioner or the railroad involved shall have a right to an administrative hearing concerning that decision.

(b) To exercise that right, the adversely affected party shall file a written request within 20 days of service of the Board's decision on them.

(c) Failure to request a hearing within the period provided in paragraph (b) of this section constitutes a waiver of the right to a hearing.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name address, and telephone number of the respondent the requesting party's designated representative, if any;

(2) The specific facts that the requesting party alleges the railroad and/or the Board wrongly determined in making its decision; and

(3) The signature of the requesting party or the requesting party's representative, if any.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, the Federal Railroad Administration shall schedule a hearing at the earliest practicable date.

§ 240.119 Hearings.

(a) An administrative hearing for review of a locomotive operator qualification petition shall be conducted by a presiding officer and can be any person authorized by the FRA Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Federal Railroad Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing.

(d) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim.

(e) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt orderly and fair resolution of the proceeding.

(f) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of part 209 in this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(g) The party favored by FRA's disposition of the initial petition under § 240.115 may participate in the hearing as a third party. Parties may appear and be heard on their own behalf or through designated representatives. Respondents may offer relevant evidence including testimony and may conduct such cross-examination of witnesses as may be required for a full disclosure of the relevant facts.

(h) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(i) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(j) The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis therefore, concerning all material issues of fact or law presented on the record;

(2) Shall be served on the respondent and any other directly affected party;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Are not precedental.

(k) The FRA shall have the burden of proving that its grant or denial of the initial petition was in accordance with law and supported by substantial evidence.

§ 240.120 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 400 Seventh Street SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action.

Appendix A to Part 240—Schedule of Civil Penalties [Reserved]

Appendix B to Part 240—Procedures for Obtaining NDR Data

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4 (a) of the Railroad Safety Improvement Act of 1988 and §§ 240.51 and 240.53 of this part. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing or reissuing him or her certification as a qualified locomotive operator.

To fulfill that obligation a railroad must review an operator candidate's recent motor vehicle driving record. Generally, tha' will be

a single record on file with the state agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency. In addition, the railroad must determine whether the operator candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers or prospective employers to have access to a state motor vehicle licensing agency's data concerning such workers' driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as locomotive operators to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular state agency, this will either involve the candidate sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. In rare instances, when an operator candidate has been issued multiple licenses, it may require more than a single request.

The National Driver Register

In addition to seeking an individual state's data, each operator candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license and, under the provisions of a 1982 amendment to the statute, four pilot states notify NHTSA concerning convictions for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway even if these convictions do not result in an immediate loss of driving privileges.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information; the name of the person whose license is being affected; and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, color of hair, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive operator request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a state motor vehicle licensing agency that is participating under the provisions of a 1982 amendment to the National Driver Register Act. Participating states can access the NDR data on behalf of the prospective operator. The state agencies that currently participate in that access program are identified in Appendix C of this regulation.

—Requesting NHTSA to Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

2. The request must contain:

(a) The full legal name;

(b) Any other names used by the person (e.g. nickname or professional name);

(c) The date of birth;

(d) Sex;

(e) Height;

(f) Weight;

(g) Color of eyes;

(h) Drivers license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished including the proper name of the railroad and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive operator shall sign the request and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

—Requesting a State Agency to Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. At present there are only a limited number of state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. It is anticipated that the number of states with such capability will increase in the near future, therefore, FRA will continue to update the identification of such states by revising Appendix C to this regulation to identify such state agencies. Since it would be more efficient for a prospective operator to make a single request for both aspects of the information required under this rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry state was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license.

—Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the later event occurs, the notification will include the identification of the state motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the state with the relevant data is the same state which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that

furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to contact the state with the relevant information. FRA requires the railroad to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the railroad may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad go beyond these efforts to obtain the information in the control of such a state agency and may act upon the pending certification without the data if an individual state agency fails or refuses to supply the records.

If the non-issuing state licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the operator candidate are physical description, photographs and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective operator an opportunity to review that record and respond in writing to its contents. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of § 240.55.

Appendix C to Part 240—Identification of State Agencies That Perform NDR Checks

Under the provisions of § 240.53 of this part, each person seeking certification or recertification as a locomotive operator must request that a check of National Driver Register (NDR) be conducted and that the resulting information be furnished to their employer or prospective employer. Under the provisions of paragraph (d) of § 240.53, each person seeking certification or recertification as a locomotive operator must request that National Highway Traffic Safety Administration conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the state agencies identified in this appendix. If the operator candidate received a license from one of the designated state agencies, he or she must request the state agency to perform the NDR check. The state motor vehicle licensing agencies listed in this appendix participate in a program that authorizes these state agencies, in accordance with the 1982 amendments to the National Driver Register Act, to obtain information from the NDR on behalf of individuals seeking data about themselves. Since these state agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that operator candidates make use of this method in preference to directly contacting NHTSA.

Although the number of state agencies that participate in this manner is limited, FRA anticipates that an increasing number of states will do so in the future. This appendix will be revised periodically to reflect current participation in the program. As of March 1, 1989, the motor vehicle licensing agencies of the following states participate under the provisions of the 1982 amendment to the NDR Act: North Dakota, Ohio, Virginia, and Washington.

Appendix D to Part 240—Potential Performance Test Criteria [Reserved]

FRA recognizes that appraisals of operator performance historically have been made by railroad managers in an informal manner. Some major railroads have been using an observation form to document an appraisal because such forms tend to ensure a more thorough and systematic assessment of operator performance.

The Need for a Systematic Approach

There are numerous criteria that should be monitored when observing a person to determine whether that individual should be considered to be a qualified locomotive operator and the details of those criteria will vary for the different classes of service, types of railroads, and terrain over which trains are being operated. At a minimum, an observer's attention should concentrate on several general areas during any appraisal. Compliance with the railroad's operating rules, including its safety, train handling rules, and compliance with Federal regulations would be carefully evaluated. But, in order to effectively evaluate employees, it is necessary to have something against which to compare their performance. Any carrier who fails to have adequate operating, safety, or train handling rules will experience difficulty in establishing an objective method of measuring an individual's skill level. Any carrier which requires the evaluation of an individual's performance relative to train handling should have established preferred operating ranges for throttle use, brake application, and train speed. The absence of such criteria results in the lack of a meaningful yardstick for the observer to use in measuring others. It is essential to have a definite standard for the operator to know what he or she is being measured against.

Evaluating the performance of certain train operation skills will tend to occur in all situations. For example, it would be rare to observe any operator for a reasonable period of time and not have some opportunity to review an operator's compliance with basic safety rules, basic operating rules, and the performance of a brake test. As the complexity of the operation increases so does the number of items that the operator must comply with. Higher speeds, mountainous terrain, and various signal systems place increased emphasis on the need for operator compliance with more safety, operating, and train handling rules. Accounting for such variables in any universal monitoring scheme immediately results in a fairly complex system.

FRA is not proposing adoption of a federally mandated, all encompassing, list of what should be observed for, but rather is suggesting the minimums of what to observe for when conducting skills performance test. Instead, FRA proposes to give railroads the discretion to determine what each carrier feels is most important in order to ensure that its locomotive operators function in a safe manner. Some railroads already have well developed criteria for conducting such evaluations and will not have any need to alter their existing practices. Since all railroads are not in that posture, FRA is providing the following information to assist railroads in developing a meaningful test.

In FRA's judgement, the kinds of operating practices that should be observed for are identified below. Obviously, the less sophisticated the railroad's operations are the fewer the number of identified practices that would be relevant.

—Does the employee have the necessary books, (Operating Rules, Safety Rules, Timetable, etc.)?
—Are predeparture inspections properly conducted (Radio, Air Brake Tests, Locomotive etc.)?
—Does the employee comply with applicable safety rules?
—Does the employee read the bulletins, general orders, etc.?
—Enroute, does the employee:
  —Comply with applicable Federal Rules? (Radio)
  —Monitor gauges?
  —Properly use the horn, whistle, headlight?
  —Couple to cars at a safe speed?
  —Properly control in train slack and buff forces?
  —Properly use the train braking systems?
  —Comply with speed restrictions?
  —Display familiarity with the physical characteristics?
  —Comply with signal indications?
  —Respond properly to unusual conditions?

—At the conclusion of the trip, does the employee:
—Apply a hand brake to the locomotives?
—Properly report locomotive defects?

The Need for Objectivity, Use of Observation Form

It is essential that railroads conduct the performance skills testing in the most objective manner possible, whether this testing is conducted as a portion of the operator's initial qualification testing or periodic retesting. There is some potential for the subjective views of the person conducting the evaluation to enter into decisions concerning the competency of a particular individual to handle the position of locomotive operator. Steps can be taken, and need to be taken, to minimize the risk that personality factors adversely influence the testing procedure.

One way to reduce the entry of subjective matters into the qualification procedures is through the use of a document that specifies those criteria that the observer is to place emphasis on. The use of an observation form will reduce but not eliminate subjectivity. Any supervisory observation trip will contain some amount of subjectivity. While compliance with the operating rules or the safety rules is clear in most cases, with few opportunities for deviation, train handling offers many options with few absolute right answers. The fact that an engineer applies the train air brakes at one location rather than a few yards away does not necessarily indicate a failure but a question of judgment. The use of dynamic braking versus air brakes at a particular location may be a question of judgment unless the carrier has previously specified the use of a preferred braking method. In any case the operator's judgment, to apply or not apply a braking system at a given location, is subject to the opinion of the observer. The carrier should attempt to reduce the subjectivity through the establishment of preferred methods of train handling.

The individual performing the observation must be familiar with the carrier's preferred train handling methods, equipment, and must be qualified on the territory being used for the observation trip. In addition, the observer must be knowledgeable regarding the carrier's operating and safety rules. There simply is no value in having an unqualified person attempt to pass judgment on the skills of another.

Many of the major carriers in the nation already have some type of observation form in use. A few have attempted to develop numeric scoring system which the FRA sees as the ultimate goal for all systems of measuring engineer performance. In devising a form, FRA does not anticipate the need for major railroads to change the forms currently in use since they already have effective observation forms. Regional railroads or short lines that have not devised a form are encouraged to create and implement one.

For railroads developing any evaluation form, the areas of concern identified earlier will not be relevant in all instances. Railroads that do not have sophisticated operations would only need short list of subjects. For example, most smaller railroads would not require line items pertaining to compliance with signal rule compliance or the use of dynamic brakes. Conversely, in all instances the observation forms should include the time and location that the observer started and ended the observation. FRA believes that there should be a minimum duration for all performance skills examinations. FRA contemplates allowing railroads to select a duration appropriate for their individual circumstances and the proposed rule require only that the period be "of sufficient length" to effectively evaluate the person. In exercising its discretion FRA would prefer that the minimums selected by a railroad be stated in terms of a distance since the examination has to be of a sufficient duration to adequately monitor the operator's skills in a variety of situations. FRA also suggests that the format for the observation form include a space for recording the observer's comments. Provision for comments ideally would allow for the inclusion of "constructive criticism" without altering the import of the evaluation and would permit subjective comments where merited.

Issued in Washington, DC, on November 30, 1989.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 89–28345 Filed 12–8–89; 8:45 am]

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Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Patent and Trademark Automated Search System Fees; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90363-9221]

RIN 0651-AA40

Patent and Trademark Automated Search System Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to set forth fees for public access to the text data bases resident on the Automated Patent System (APS) and the automated trademark search system (T-Search). Public Law 100-703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for on-line access to the automated search systems.

The Office will provide on-line access to its USPAT data base (full text of U.S. patents issued after 1974), the U.S. classification data from 1790 to the present, and to English abstracts of Japanese and Chinese patents (to the extent they are available), hereinafter referred to as APS-Text, in its Patent Search Room and to T-Search in its Trademark Search Library, located in Arlington, Virginia. Except for a series of pilot experiments which may occur over the next one or two years, the Office does not plan to provide routine remote on-line access to these data bases at any other facilities at the present time. A separate rulemaking process will be followed when the Office determines to provide such remote on-line access.

Both search systems have been made available to the public free of charge since April 3, 1989, for the purposes of education and training (familiarization).

The paper and/or microfilm collections of U.S. patents, foreign patent documents and U.S. trademark registrations continue to be available to the public free of charge, as provided by section 104(b) of Public Law 100-703. The Office reaffirms its commitment to hold a public hearing prior to making any decision concerning the elimination of the paper files.

This final rule establishes fees for use of the on-line automated search systems. In addition, procedures for public use of the automated search systems, including training and charging of fees, are presented.

In response to the notice of proposed rulemaking published in the **Federal Register** on May 3, 1989 (54 FR 18907), and at a public hearing held on June 30, 1989, the Office received many comments regarding problems encountered by the public in the use of T-Search. The Office believes that T-Search has proven effective for searches performed by Trademark examining attorneys in connection with their examination of applications for the registration of marks. Although the Office is establishing a fee for accessing the T-Search system, the Commissioner is immediately suspending collection of that fee to provide additional time for the public to familarize themselves with T-Search. The Office will provide the public with sixty days notice before starting to collect the fee.

EFFECTIVE DATE: February 12, 1990. Section 2.6(w) will take effect February 12, 1990 but immediately be suspended by the Commissioner. The Office will provide written notice in the **Federal Register** sixty days before starting to collect fees for accessing T-Search.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish new fees for the on-line use by the public of APS-Text, and T-Search that are to be provided in the Office's facilities in Arlington, Virginia. This final rule is consistent with the Office's Electronic Data Dissemination Policies and Guidelines, which were published in final form in the **Federal Register** on May 3, 1989, at 54 FR 18920. Establishment and adjustment of patent fees is provided for by section 6 and section 41 of title 35, United States Code, and section 103(b) of Public Law 100-703. Establishment and adjustment of trademark fees is authorized by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), and section 103(a) of Public Law 100-703. Information on the procedures for public use of the automated systems, including training, waivers, and the charging of fees, also is presented.

Background: In response to Public Law 96-517, the 1980 legislation which amended patent and trademark laws, the Office prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: The creation of electronic data bases that (1) would eventually replace the Office's all-paper patent and trademark files, and thereby improve the integrity and quality of Office records; and (2) would support searches, examinations, Office actions and other Office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Over 700,000 active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. A computer system has been installed to enable trademark examining attorneys to search the data base for registered and pending trademarks and associated textual data, including marks containing designs, and to retrieve, display and print all information as a substitute for paper file searches. Trademark examining attorneys have been using T-Search exclusively since January 1988 via a network of approximately 40 terminals. After a six-month experimental T-Search evaluation program conducted between June and December 1988, the capability was deployed for public use in the Trademark Search Library on April 3, 1989.

The T-Search "dead data base," trademarks cancelled, expired or abandoned since March 1984, also is available to the public, but approximately 17,000 images are missing and an additional 184,000 registrations and applications have not been quality checked. Trademark examining attorneys do not search this data base in connection with examining activities.

An Automated Patent System (APS) was installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS, that is, large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with two high resolution graphic displays and laser printers were interconnected on July 1, 1986, to enable system test and evaluation to begin in the testbed group.

On-line access to the full-text of all U.S. patents granted after 1974 and then to English language abstracts of Japanese patents was deployed to the patent examining staff beginning in 1986. On-line access to APS-Text permits examiners to search the text of approximately one million U.S. patents containing more than five billion words. Today, all examiners have been trained in the use of the full-text searching tool, and it has become a routine part of the patent examination process for many examiners. Searches are conducted from approximately 71 single screen text

terminals located throughout the Office. The APS-Text capability was deployed to the public in the Patent Search Room on April 3, 1989.

The Office intends to enter the text of virtually all U.S. patents issued after 1970. In addition, selected tabular data and chemical and mathematical equations will be added to the current full text file. Ultimately, approximately 1.2 million U.S. patents will be available to both patent examiners and the public for search in full text form.

Public evaluation of the APS full-text search capability was conducted between January 11 and April 15, 1988. Forty-two (42) public users were trained on APS-Text during January 1988, and allowed first-come/first-serve access to several terminals. Reactions of public users to APS-Text were positive. Public users found APS-Text useful for pre-application and state-of-the-art searches.

A total of 38 public users were trained on T-Search during a public evaluation period conducted between June and December 1988. Preliminary review indicted that public users considered T-Search to be useful both as a source for registrability searching and for verifying paper searches. In addition, T-Search was found to facilitate searches by class and ownership.

Public Law 100–703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for public access to the automated search systems while it continues the requirements that no more than 30 percent of automation resources may be from user fees and that the Office may not enter into exchange agreements relating to automatic data processing resources.

Section 104(c) of Public Law 100–703 allows the Commissioner to waive the payment by an individual of fees for accessing the automated search systems upon a showing of need or hardship, and if such waiver is in the public interest.

The information contained in the automated data bases, which will be available to the public at the Patent and Trademark Office in Arlington, Virginia, is available free of charge at that location in paper form, and is substantially available through commercial vendors. The Office believes it to be in the public interest to waive the fee for public access to its text data bases in situations where access to the data base is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user.

A personal, educational purpose is one in which the person using the data base is attempting to satisfy a personal need, and is not conducting a search or otherwise using the data base for compensation in any form. Examples of appropriate waiver situations would include students or teachers doing a term paper, or a university professor collecting background information for the preparation of an application for a research grant. An example of a situation where a waiver would not be appropriate would include an individual doing work for remuneration—e.g., a law student doing a pre-examination or infringement search for a law firm.

The Commissioner will further consider a fee waiver based on a genuine financial hardship. The person requesting a waiver will be required to provide information that would demonstrate a clear inability to pay the fee.

A waiver for the payment of fees is intended to be granted sparingly, and generally only when terminals are available. It is not anticipated that fees will be waived for any one individual more than once or twice each year. The Commissioner reserves the authority to control access to the data bases and deny a waiver to any individual.

The waiver policy would apply only to use of the automated system, and not to the printing or sale of copies. Any abuse of the waiver policy could lead to a ban on the use of any public search facility for that indivdual.

Cost Calculations: The Office calculated unit costs for all fees based on OMB Circular A–25, "User Fees", and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, financial statements for the Office) and included direct and indirect costs to the Office of carrying out the activity, as directed by OMB Circular A–25. User charges for both APS-Text and T-Search were based on the marginal costs of providing these services to the public.

In calculating the costs of providing access to T-Search and APS-Text to the public, the Office followed Congressional direction that fees be reasonable by reflecting the marginal cost for providing the new service and not include the costs of designing or installing the automated system for use by Office examiners, or the development of the new systems.

Prior to preparation of this final rule, all of the cost assumptions and cost calculations were reviewed and modified to ensure that they included the Office's best estimates and projections.

APS-Text

The Office is establishing the $40.00 fee for each hour of terminal session time on APS-Text. The marginal costs for one hour terminal session time on APS-Text include a portion of the lease cost of a new computer mainframe which originally was to be acquired in fiscal year 1990 for use by Office patent examiners. To meet public search requirements, the mainframe is being leased earlier than originally planned. That portion of lease costs for the three (3) month period March 1990 through May 1990 over and above the lease costs for a mainframe sized to meet only examiner needs is being passed on to the user. After May 1990, the mainframe was intended to be procured and installed to support APS. Therefore, no costs are being passed on to the public user after that time. When public usage reaches the level where a mainframe dedicated for public use is required, fee adjustments will be proposed to pass all of the costs of that mainframe on to the public.

The level of public use will affect the amount of main memory needed to support the additional search sessions. It is projected that an additional increment of main memory will be required in fiscal years 1991 and 1992. This increment would not be required to support the examiner workload alone.

The fee calculations for public access also include the costs for equipment: Network interface units, text terminals, printer noise dampeners and text terminal printers.

Other costs include a portion of the license fees that must be paid to Chemical Abstracts Service for its proprietary text and structure search software; additional personnel for the Patent Search Room, and the Office of Information Systems; computer installation costs; supplies and equipment dedicated to public use; and general and administrative overhead.

The Office is providing free access time during training on the automated search systems in accordance with § 104(c) of Public Law 100–703 which reads," a limited amount of free access shall be made available to all users of the systems for purposes of education and training."

The usage rate estimates are based on the three-month public user study performed from January through March 1988. For this study, 42 frequent Patent Search Room users were selected to be trained in the use of APS-Text. Three text terminals were made available to the trained public users at no charge. During the three-month study period,

use of the three terminals averaged approximately 50 percent. While it is impossible to accurately predict future use by a more diverse group of public users, the cost calculations attempted to take into account the following factors and assumptions:

1. Future public users, on average, would use APS-Text less frequently than the 42 frequent users selected for the 1988 study, many of whom routinely used commercially automated text search tools.

2. Collection of a fee for use (as opposed to the absence of any charge during the study) would reduce demand for text search services when compared with usage data obtained during the study period.

3. The potential universe of public users is expected to average no more than 300 per day.

4. The average length of a public user search session is projected to be approximately 22 minutes—the average length of a search session during the 1988 test of public use.

5. Based on the preceding assumptions, if all 300 potential public users conducted a single search session during a workday, a total of 110 hours of access would be required. Twenty-five text terminals available five days a week, twelve hours a day, would provide a maximum potential of 300 hours of available text search time. Under these assumptions the number of text terminals appeared to be adequate for the foreseeable future.

6. For purposes of actual use of available text terminals, the following estimates were used:

(a) In fiscal year 1990, between four (4) and six (6) terminals would be available during the first quarter. An estimate of 45 percent utilization of available text terminal time was projected. By increasing the number of text terminals to 10 in January 1990 and 20 in April 1990, an estimate of 40 percent utilization of available text terminal time was projected. By increasing the number of text terminals to 25 in July 1990, an estimate of 35 percent utilization of available text terminal time was projected.

(b) During fiscal year 1991 and beyond, stable levels of usage were projected to be achieved, yielding an estimated 35 percent average utilization of the 25 available terminals. This utilization rate equates to 105 session hours per day, or an average of 4.2 session hours per terminal per day. At an average of 22 minutes per session, a total of 286 search sessions per day.

Although usage rates since the system was made available to the public in April 1989 have been higher than projected, the Office believes these projections are valid for the three-year fee cycle.

A summary of the fee calculations is as follows:

APS-TEXT.—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: Compensation and benefits	$918,196
Hardware and maintenance	691,289
Software (license fees)	295,676
Site preparation	38,118
Non-capital furniture	8,750
Supplies and forms	3,500
Sub-total	1,955,529
General and administrative overhead	361,773
Total cost	2,317,302
Estimated use (hours)	65,946
Unit cost (per hour)	35.14

The marginal cost for one hour of Office staff search assistance on APS-Text includes the costs of personnel compensation and benefits.

A summary of the fee calculations is as follows:

APS-TEXT.—MARGINAL COST OF ONE-HOUR OF OFFICE STAFF SEARCH ASSISTANCE

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: Annual compensation and benefits	$45,659
Total cost	45,659
Work hours (per annum)	1,776
Unit cost (per hour)	25.71

The marginal cost for a printed copy generated from APS-Text includes costs for compensation and benefits, printers, furniture for the printers, supplies and forms, and general and administrative overhead.

A summary is as follows:

APS-TEXT.—MARGINAL COST OF EACH PRINTED PAGE

[December 1989-November 1992]

Cost element	Public share (marginal cost)
Personnel: Compensation and Benefits	$173,472
Hardware and maintenance	13,483
Non-capital furniture	5,000
Supplies and forms	35,882
Sub-total	227,837
General and administrative overhead	42,150
Total cost	269,987

APS-TEXT.—MARGINAL COST OF EACH PRINTED PAGE—Continued

[December 1989-November 1992]

Cost element	Public share (marginal cost)
Estimated use (pages)	4,496,325
Unit cost (per page)	0.060

T-Search

The marginal cost for one hour of terminal session time on T-Search includes the costs of personnel in the Trademark Search Library, maintenance of the T-Search terminals, routine site preparation, supplies and forms, and general and administrative overhead. The Office is establishing the $40.00 fee for each hour of terminal session time on T-Search, but is immediately suspending collection of that fee in order to provide public users additional time to familiarize themselves with the system.

The comments submitted in response to the proposed rulemaking indicate that the public users have not adequately adjusted to the T-Search system. During the period collection of the fee is suspended, the public will have an opportunity to better learn the system so as to perform more effective searches than they may be experiencing now. The Office will publish a notice in the Federal Register sixty days before it begins collecting a fee for public access to T-Search.

Usage rates for T-Search during fiscal years 1990–1992 were projected to be 28 percent of the hours the system would be available to the public. This rate was extrapolated from actual usage rates during the T-Search public user pilot program which was conducted from June through December 1988. A total of 33 members of the public were trained on T-Search, and about 24 to 28 public users were active on T-Search each month. The overall usage rate of these active users was 14 percent of the hours the system was available to the public. In projecting usage rates on which to base a fee amount, it was anticipated that the overall number of users and the usage rate would double once T-Search was made available in the Trademark Search Library to all users of that search facility and training was provided on a routine basis. Although usage rates since the system was made available to the public in April 1989 have been higher than projected, the Office believes these projections are valid for the three-year fee cycle.

A summary of the fee calculations are as follows:

T-SEARCH.—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[December 1989-November 1992]

Cost element	Public share (marginal cost)
Personnel: compensation and benefits	$154,451
Hardware and maintenance	28,809
Site preparation	1,000
Supplies and forms	3,298
Sub-total	187,558
General and administrative overhead	34,698
Total cost	222,256
Estimated use (hours)	5,985
Unit cost (per hour)	37.14

The marginal cost for a printed copy generated from T-Search includes costs for compensation, and supplies and forms. A summary of the costs is as follows:

T-SEARCH.—MARGINAL COST OF EACH PRINTED PAGE

[December 1989-November 1992]

Cost element	Public share (marginal cost)
Personnel: compensation and benefits	$27,862
Hardware and maintenance	5,274
Supplies and forms	3,579
Sub-total	36,715
General and administrative overhead	6,792
Total cost	43,507
Estimated use (pages)	448,875
Unit cost (per page)	0.097

The proposed fee of $25.00 for each hour of Office staff search assistance to conduct a search using T-Search has been withdrawn. The T-Search system can be used by the public with routine assistance provided by the regular staff of the Trademark Search Library. This is similar to assistance on how to use the paper files now provided free of charge by the Trademark Search Library staff. Office employees will neither work one-on-one with members of the public in conducting searches, nor conduct searches for members of the public.

Rounding Procedures: Fee amounts were rounded so that the amount rounded would be de minimis and convenient to the user. This procedure is consistent with section 103(b) of Public Law 100–703 which allows the Office to adjust patent fees in the aggregate, and with section 103(a) of Public Law 100–703 which allows the Office to adjust trademark fees in the aggregate.

The Office has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Procedures for Public use of APS-Text and T-Search

Patent Search Room Configuration

Initially four (4) text search terminals will be installed and available for public use in the Patent Search Room. A printer will be associated with each text search terminal. An additional terminal will be located in Patent Search Room employee office space for control and administration activities. Up to twenty-one (21) more terminals and printers are planned to be added for public use during fiscal year 1990, if necessary.

Trademark Search Library Configuration

Initially three (3) T-Search terminals with associated printers will be installed and available for public use in the Trademark Search Library. The terminals will be clustered in one area of the Trademark Search Library. An additional terminal will be located in Trademark Search Library employee office space for control and administration activities. Additional terminals and printers will be added as demand warrants and space permits.

Training

To enable prospective public users to become effective on APS-Text, approximately fourteen (14) hours of free basic training is being offered. For those familiar with automated search systems, a shorter course of six (6) hours is provided. Ten (10) members of the public can be trained during each class. Training is being held at the Office's Arlington, Va. complex during normal work hours.

Four (4) hours of basic training is being offered on the use of T-Search. For those familiar with automated search systems, a shorter course of one (1) hour is available. T-Search training is being held in the Office's Arlington, Va. complex during morning, evening and weekend hours.

Enrollment in all training classes initially was on a lottery basis. Public users who wished to be trained on APS-Text or T-Search were required to submit an application form. The Office is now accepting requests for training and adding the names to the list. As of August 31, 1989, 696 people or 70 percent of all those requesting training have been trained.

System Use and Fee Procedures

To ensure equity of public access to the automated systems, as well as efficient operations, rules for use will be posted at the terminals. Users of the systems will be expected to comply with the rules and with all other regulations regarding the use of facilities.

Users are strongly encouraged to register in advance for system use. Each week, the next week's schedule will be available in the Patent Search Room and the Trademark Search Library. Should requests for blocks of terminal time exceed the availability of terminals, limits on the amount of reserved time may be instituted. Up to three (3) of the initial four (4) terminals in the Patent Search Room and up to two (2) of the initial three (3) terminals in the Trademark Search Library will be allocated to public users with advance reserved times. The remaining terminal in the Patent Search Room will be available for walk-up users and for assisted searches for infrequent users. The remaining terminal in the Trademark Search Library will be available for walk-up users. The terminal time reservation system and the number of terminals available for walk-up public use and for assisted searches (in the Patent Search Room) is subject to change based upon operational experience.

All public use of APS-Text and T-Search, with the exception of scheduled training classes, is on a pre-payment basis. In pre-paying for the use of the systems, the public may use a blank signed check, major credit card or charge to a deposit account. At the end of the search or the pre-paid amount of time, users will receive an accounting from Patent Search Room or Trademark Search Library staff for terminal time used and prints produced. The user must then finalize payment.

Discussion of Specific Rules

37 CFR 1.21 Miscellaneous fees and charges.

Section 1.21 is amended to add new paragraph (o) to set the fees for access to the Automated Patent System full-text search capability (APS-Text) and to provide for the waiver of fees under certain circumstances.

Section 1.21 is amended to add new paragraph (p) to set the fees for APS-Text search assistance by Office staff.

Section 1.21 is amended to add new paragraph (q) to set the fee for a printed copy from APS-Text.

37 CFR 2.6 Trademark fees

Section 2.6 is amended to add a new paragraph (w) to set the fees for access

to the automated trademark search system (T-Search) and to provide for the waiver of fees under certain circumstances.

Section 2.6 is amended to add new paragraph (x) to set the fee for a printed copy from T-Search.

A final rule package establishing two new fees under the provisions of Public Law 100–667, the Trademark Law Revision Act of 1988, has been published which added paragraphs (u) and (v) to § 2.6. Therefore, the rule has been modified from the proposal to add paragraphs (w) and (x) instead of paragraphs (u), (v) and (w).

Response to Comments on the Rules

A notice of proposed rulemaking to establish a basis for the charges for use of the on-line automated search systems in the Patent Search Room and Trademark Search Library located at the Patent and Trademark Office in Arlington, Virginia was published in the **Federal Register** on May 3, 1989, at 54 FR 18907. Corrections were published in the **Federal Register** on May 12, 1989, at 54 FR 20670. A notice also was published on May 30, 1989, in volume 1102 of the *Official Gazette* of the United States Patent and Trademark Office, pages 94 through 98 for patents, and pages 96 through 100 for trademarks.

A public hearing was conducted on June 30, 1989. A total of 25 comments were received: 24 respondents submitted written comments and five people presented oral testimony (four of whom also submitted written comments) at the public hearing. Of the 25 comments, twelve (12) were from individuals, seven (7) from libraries, five (5) from organizations and one (1) from business. All of the written and oral comments were considered in adopting the rules set forth herein.

Many of the comments from the representatives of the Patent Depository Libraries raised questions or commented on the proposed rules from the perspective of their impact on Patent Depository Libraries. The proposed rules and policies set forth in the **Federal Register** Notice of May 3, 1989 are applicable only to the automated search systems provided in PTO's facilities located in Arlington, Virginia. When the Office is prepared to offer the automated search systems at the Patent Depository Libraries, a proposed notice will be published for public comment. Therefore, any comments relating to procedures for accessing the automated search systems in the Patent Depository Libraries will not be addressed at this time.

Comment: Overall, nine respondents acknowledged the usefulness of the automated search systems, particularly APS-Text. Although seven respondents alleged that T-Search is not adequate to meet the needs of the public, that its response time is too slow, and that it is not sufficiently accurate to meet the specific needs of the commentor, most of these respondents acknowledged that T-Search had the potential for being a useful tool. Documentation of specific problems, for example, those associated with conducting a phonetic search, were provided. Two respondents said that T-Search is flawed and the decision to require examiners to use the system on an exclusive basis was ill-advised and regrettable.

Response: Trademark examining attorneys have been using T-Search for word mark searches since August 1987, and for word mark and design searches since January 1988. The public has been using the system since April 3, 1989.

The minutes to the September 27, 1988, meeting of the Public Advisory Committee for Trademark Affairs, express the view that: "* * * T-Search searches are more thorough than manual searches." The transcript to that meeting contains the following comments: "I don't think there is any question, but a T-search [sic] properly done gives an excellent result" and "* * * from the corporate point of view,* * * I am pleased to say that I like what I see. I like the very fast action we're getting on the first action." From the transcript to the February 23, 1988 meeting: "I'd like to start with a glowing report. I think that the registration process is working very well. From my own personal experience in terms of what the examiners are doing, they get A plus. They're really going a good job."

The consensus of the management of the Trademark Examining Operation is that the T-Search system meets the needs of the Office at this time. There is no indication in any records or activities in the PTO which would indicate that the use of T-Search has caused a deterioration in the quality of searches conducted by Trademark examining attorneys.

The difference between the perceptions of the Trademark examining attorneys and the public may be attributed to several factors: Trademark examining attorneys use the system on a daily basis; they know what the system can do and what it cannot do and avoid the latter; and they know how to utilize the system's functionalities to perform the best search possible. Futher, Trademark examining attorneys do different types of searches, and have different needs than the public. T-Search use statistics for the period April 1989 through August 1989 demonstrate that the public is making extensive use of the system. Following is a summary of those statistics:

Month	Available hours	Hours used by public	Rate of usage (percent)	Average session time (min.)
April	513	108	21	13.02
May	513	126	24	12.25
June	627	183	29	10.84
July	570	186	33	12.51
Aug	656	217	33	9.66

This usage rate compares favorably to the projected rate of 28 percent.

Comment: Seven respondents claimed that the paper Trademark files have been allowed to deteriorate and, therefore, are not reliable for use by the public.

Response: The Office contracts for file maintenance services in both the Trademark Search Library and the Patent Search Room. Among the tasks performed by the contractor in the Trademark Search Library are maintaining the pending files, filing newly registered Trademarks, pulling erroneous registrations from the file, etc. The contract for the Trademark Search Library includes a monitoring system based on MIL–STD 105, which is a sampling plan that provides a 97 percent accuracy level. Once the contractor completes a task, Office staff check the required sample levels to ensure that filing was performed accurately. The Office is constantly monitoring the status of the paper files, but notes that maintenance of paper file integrity is subject to inherent limitations.

Comment: In view of the above comments about the inadequacy of the Trademark paper search files and T-Search, six repondents advocated the need for T-Search, at no charge to the user, as an adjunct or back-up to the paper files. One respondent suggested a similar arrangement in the Patent Search Room.

Response: The Office has adopted the $40.00 fee amount for one hour of terminal session time on both APS-Text and T-Search. In order to give the public more time to become familiar with the T-Search system, the Commissioner is immediately suspending collection of that fee. This will enable users to learn the system so as to perform more effective searches. The Office will publish a notice in the **Federal Register** announcing its decision regarding the imposition of the fee at least 60 days before starting to collect the fee amount.

At that time, the Office also will publish validated cost estimates based on usage rates and actual costs documented from the present time to the time the decision to collect a fee is made.

Comment: Two respondents claimed that the objective of automation necessarily contemplated a free search system to give meaning to the constuctive notice provisions of the Trademark Act.

Response: Registration of a trademark constitutes constructive notice and records of all active trademark registrations and pending applications are available for searching free of charge in the paper file and on TRAM (Trademark Reporting and Monitoring System) data base.

Comment: One respondent claimed that PTO is required to provide access to disclosed patent information as the information is made public; four respondents were opposed to the Office charging fees for accessing the automated search systems; two other respondents commented that the Office should not charge fees for using systems designed to be the sole searching source of the public records which the Office is charged by law to provide; and one respondent commented that the proposal to limit access to the automated data bases only to those who can pay a fee is deplorable policy at a time when there is concern about industrial competitiveness with Japan.

Response: The Office will continue to make the paper and/or microfilm collections of U.S. patents, foreign patent documents and U.S. trademark registrations available for public access free of charge. The Office also has adopted a policy whereby the hourly terminal session fee for access to the data base can be waived when it is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user. In this way, the Office will continue to provide public access to all available information free of charge.

Comment: One respondent commented that user fees for electronic data is a form of dual taxation when information was gathered, organized and produced at taxpayers expense; and two respondents claimed that users of information have contributed up to 30 percent of the $120 million for development of the APS system to date—in other words, the public already has paid for APS.

Response: In calculating the proposed fees, the Office is consistent with the Office of Management and Budget's proposed policy on user charges for Government information products, as clarified in the June 15, 1989 **Federal Register** notice entitled "Second Advance Notice of Further Policy Development on Dissemination of Information." In that notice, OMB's stated policy is that user charges for Goverment information products should be no higher than a level sufficient to recover the costs of disseminating, not collecting, the information.

The costs associated with the fees for accessing APS-Text and T-Search are directly related to the public's use of the systems; for example, the costs associated with the acquisition of the APS-Text terminals that are being used by the public. No costs associated with designing or installing the automated system for use by Office examiners, or the development of the new systems have been included. Neither have costs been included for gathering, organizing or producing information.

The **Federal Register** notice of June 15, 1989 (54 FR 25554, 25558) dealing with policy development on dissemination of information states that: "As to double taxation, OMB notes that user charges policy has a basis in statute (31 U.S.C. 9701), and the Congress has not viewed user charges as double taxation because they are applied when the recipient receives special benefits."

Comment: Two respondents stated that Government information is the same, whether it is provided in printed or electronic form.

Response: Charging fees for access to the automated search systems is consistent with PTO's fee policy. For example, fees are charged for manual search services (e.g., for a search of Office records or for a search of assignment records), and for printed copies of patents and trademarks and for copies of Office documents.

Comment: The Japanese system is available at four locations at no cost, and includes U.S. information made available at U.S. taxpayer expense.

Response: The Japanese automated search system, like the automated search systems in the PTO's search facilities, is being made available free of charge at the present time. The costs of such use, however, are being paid from general fee revenues collected by the Japanese Patent Office. Additionally, the APS-Text system currently includes Japanese English language abstracts and the Office is in the process of acquiring Japanese patent information in digital facsimile form.

Comment: One respondent commented that PTO has no responsibility to provide an expensive, complex, internal Government on-line value-added computer service, that this is far beyond the requirements of public access to patent files; and another respondent commented that it is in the public interest to have the same system that is being used by the examiners also available to the public.

Response: The Office agrees that it is in the public interest to provide the same search system capability to the public that is being used by the examiners.

Comment: One respondent stated that providing free access is not competing with the private sector, and that there always is a place for the private sector to provide value-added information.

Response: The user charges adopted for public access to the APS-Text and T-Search systems are consistent with OMB Circulars A–25 "User Charges" and A–130 "Management of Federal Information Resources," and with the PTO's Electronic Data Dissemination Policies and Guidelines. The PTO's user fees are designed to recover the marginal costs associates with providing access to the automated search systems to the public.

Comment: Five respondents stated that the proposed fees are not "reasonable" and the Office does not have documented cost estimates and usage rates to support the proposed fee amounts.

Response: The Office is meeting Congressional direction to establish "reasonable" fees by recovering only the marginal costs associated with providing public access to the automated search systems. Costs and projected usage rates were determined from the best available records, for example, financial statements for the Office and the results of the public evaluations of the APS-Text and T-Search systems. A summary of the costs used in the fee calculations is included above under "Cost Calculations." Full details of these cost calculations are available for public inspection at the Patent and Trademark Office in Suite 904 of Building 2, Crystal Park, at 2121 Crystal Drive, Arlington, Virginia.

Comment: Two respondents questioned the proposed fees for search assistance. If the search assistance is similar to that which is provided free now, there should be no fee. If the search assistance entails doing searches, the Office should not be getting into that business.

Response: The PTO is withdrawing the proposed fee for staff search assistance to conduct a search using T-Search capabilities. The fee for staff search assistance to conduct a search using APS-Text capabilities is being

adopted, because an untrained user cannot conduct a search without significant help from Office staff. Users, of course, have the option of obtaining free training on the system.

Comment: One respondent commented that user fees cannot be justified under the theory that electronic search provides a new service or offers an enhancement to the public's ability to search the patent data base, and that the public has an option of paying the fee or using the paper files. Another respondent commented that APS-Text and T-Search represent enhancements to services already provided.

Response: The fees are specifically authorized under section 104(c) of Public Law 100–703 and are calculated to allow recovery of only the marginal cost for providing the system to the public.

Comment: Two respondents claimed that the Office should ask Congress for funding to offer free access here and at the PDLs.

Response: It continues to be PTO policy, consistent with OMB Circular A–130, that costs for access to the automated search systems be borne by those who actually use the automated search systems.

Comment: One respondent claimed that the accuracy of the trademark data base is suspect.

Response: All of the backfile data base elements (registrations issued prior to September 9, 1980) have been corrected except owner information. As originally planned, the owner field will be cleaned up for active registrations issued prior to September 9, 1980. It is projected that this owner field will be cleaned up by the third quarter of fiscal year 1991.

Comment: Three respondents claimed that the public requires access to the dead data base.

Response: The Office will consider this proposal further. The dead data base is now available in electronic format for all applications and registrations that were active on January 1, 1983 and are now inactive. However, many of these records are of poor quality. Costs for cleaning up these records would be significant, and those costs would likely be reflected in the T-Search user fee.

Comment: Four respondents addressed the fee waiver policy. The proposal to waive fees appears inconsistent with PTO's position that the free paper search files provide an equal and viable resource to anyone not wanting to pay for the automated files. If paper records are inferior, then anyone seeking access to T-Search should be able to qualify for the fee waiver. If the paper records are adequate, then there should be no need to waive the access fee for anyone.

Response: The waiver policy authorized by Public Law 100–703 is designed for those individuals who, for some reason in the public interest, such as an educational purpose, need the capabilities of the automated system, for example, to manipulate the data.

Comment: One respondent commented that the procedure to enroll people in training classes by the use of a lottery was unfair and that everyone who wants to be trained should be enrolled.

Response: The lottery system was a method for establishing the initial schedules to provide training. Everyone who requests training will be trained. As of August 31, 1989, 449 out of 623 people requesting training on APS-Text, and 247 out of 376 people requesting training on T-Search have been trained.

Comment: One respondent commented that advance registration is an unrealistic approach for many searchers.

Response: At least one terminal in the Patent Search Room and one in the Trademark Search Library will be available for walk-up users. The other terminals will be available first for users with a reservation and then, if needed, for walk-up users. This system is designed to ensure equity of public access to the automated systems.

Comment: Two respondents asked for information justifying that this is not a "Major Rule" as defined by Executive Order 12291, and that the rule will not have a significant adverse impact on small entities.

Response: The no "major rule" determination and no significant adverse impact on small entities was based on the fact that the automated systems are being offered only at the Patent and Trademark Office's public search facilities located in Arlington, Virginia. The total number of users of these facilities averages less than 400 a day, and many of these users are members of law firms or commercial search services. The annual effect on the economy is expected to be about $1 million, far less than the $100 million annual threshold specified in the Executive Order. The fees for accessing the automated search systems are reasonable and should not burden small entities and, at the same time, the Office is continuing to maintain the paper search files which are available to the public free of charge. Finally, there should be no significant adverse effects on competition, because the systems are being offered only at one location, the Patent and Trademark Office in Arlington, Virginia, and the public may continue to use paper files without payment of any fee.

Comment: Five respondents commented that user fees burden small entities and run counter to a fundamental objective of the patent system which is to advance technology through dissemination of the technical information contained in patents.

Response: The Office does not believe that the fee amounts adopted will burden small entities or negatively impact the dissemination of technical information. The Office also will continue to maintain the paper search files using taxpayer funds, and provide access to the public free of charge. Further, the Office has adopted a fee waiver policy whereby the fee amount can be waived where access to the data base is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user. Full details are included above under "Background."

Comment: One respondent commented that the Office needs a policy to ensure that no user of the patent and trademark information is disenfranchised due to an inability to pay for the services necessary to its access.

Response: The Commissioner will consider a fee waiver for users with a genuine financial hardship.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The rules make the Office's on-line, automated patent full-text search and trademark search systems available to the public at rates significantly less than commercial systems.

The Office has determined that this rule change is not a major rule under

Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the Office is amending title 37 of the Code of Federal Regulations, chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.21 is amended by adding new paragraphs (o) through (q).

§ 1.21 Miscellaneous fees and changes.

* * * * *

(o) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using Automated Patent Sysetm full-text search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to the Automated Patient System full-text search capability (APS–Text) upon a showing of need or hardship, and if such waiver is in the public interest: $40.00.

(p) Marginal cost, paid in advance, for each hour of Office staff search assistance to conduct a search using Automated Patent System full-text search capabilities (APS–Text), prorated for the actual time used: $25.00.

(q) Marginal cost, for each printed page generated from the Automated Patent System text terminal: $0.10.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by adding new paragraphs (w) through (x).

§ 2.6 Trademark fees.

* * * * *

(w) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using T-Search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to T-Search upon a showing of need or hardship, and if such waiver is in the public interest: $40.00.

(x) Marginal cost, for each printed page generated from the T-Search terminal: $0.10.

Dated: December 4, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89–28791 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–16–M

federal register

Monday
December 11, 1989

Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Technical Assistance Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1458; FR-2616-P-01]

RIN 2506-AA90

Community Development Technical Assistance Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update the Department's procedures governing the issuance of technical assistance awards under Title I of the Housing and Community Development Act of 1974 and add the Urban Homesteading Program as a program for which technical assistance can be provided. It would clarify the Department's authority to make such awards and make the procedures more efficient and cost-effective.

DATE: Comments due February 9, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Copies of all written comments received will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Technical Assistance Division, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6090. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The procurement and assistance requirements for the Technical Assistance Program have been approved under OMB Control Numbers 2535-0085 and 2535-0084, respectively. However, § 570.240(h)(3) of this rule has been determined by the Department to contain an additional collection of information requirement. Information on the additional requirement is provided under the Preamble heading, "Other Matters." Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

Background

HUD's Community Development Technical Assistance Program is authorized under section 107(b)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5307, (the "1974 Act"). This program is administered under the Secretary's Fund, subpart E of 24 CFR part 570, and governed by the Department's regulation at § 570.402.

As a result of amendments made to section 107(b)(4) of the 1974 Act by section 107 of the Housing and Urban-Rural Recovery Act of 1983, Public Law 98-181, (the "1983 Act"), and section 517(b)(2) of the Housing and Community Development Act of 1987, Public Law 100-242 (the "1987 Act"), and the Department's initiatives designed to improve program administration, it is necessary to revise and update § 570.402, as discussed further below. The 1987 Act added the Urban Homesteading Program authorized by section 810 of the 1974 Act as a program for which technical assistance can be provided.

This Rule

The proposed rule would update the existing regulation; however, the proposed rule would not adversely affect or narrow the entities eligible for assistance, nor would it amend the substantive bases for awarding technical assistance funds.

The amendment made by the 1983 Act clarifies that HUD can fund groups through grants or cooperative agreements (as well as contracts) for the purpose of providing technical assistance to governmental units to plan, develop and administer assistance under Title I of the 1974 Act. The proposed rule, therefore, would eliminate eligibility distinctions under § 570.402(d)(1) and (2) of the existing rule, between applicants for grants on the one hand, and for contracts on the other, and thus would permit any eligible applicant to receive technical assistance funding under a grant, contract or cooperative agreement.

The proposed rule would set out the seven national program objectives, at least one of which must be addressed by technical assistance funding. In so doing, it would update the national technical assistance objectives that are now listed.

Also, the proposed rule would identify specific activities that would be eligible for technical assistance, and, in a separate paragraph, activities that would not be eligible for assistance. Neither list of activities is all-inclusive, but each contains major activity areas and would provide, therefore, additional guidance concerning what the Department does and does not consider to be appropriate funding areas.

The proposed rule would set out selection criteria for unsolicited funding proposals and would note that for solicited proposals, review and selection criteria would be identified in HUD's request for applications or proposals. The selection criteria in the current rule were developed for the Department's Fiscal Year 1978 technical assistance funding allocation and would be no longer appropriate.

Also, the proposed rule would set out uniform application procedures that, unlike the current rule, would not distinguish between requirements for applicants for regional, national and State technical assistance funding.

HUD's environmental rule at 24 CFR 58.34(a)(7) exempts technical assistance awards from environmental requirements because activities under the proposed rule would not constitute a development decision or affect the physical condition of project areas or building sites.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not make any significant substantive changes to the Technical Assistance Program but merely would revise the program regulations to update, consolidate, and simplify provisions needed to improve program administration.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order because it would merely revise the program regulations to update, consolidate, and simplify provisions needed to improve program administration. It would not adversely affect or narrow the entities eligible for assistance, nor would it amend the substantive basis for awarding technical assistance funds.

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the proposed rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C., 605(b)), the Undersigned hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, because a very small number would be recipients of these awards, and any administrative costs related to the awards would be provided as part of the amount funded.

This rule was listed as item No. 1079 in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702, 44726), under Executive Order 12291 and the Regulatory Flexibility Act.

The Technical Assistance program is listed in the Catalog of Federal Domestic Assistance under number 14.227.

Information Collection Requirement

The collection of information requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The procurement and assistance requirements for the Technical Assistance Program have been approved under OMB Control Numbers 2535–0085 and 2535–0084, respectively. However, § 570.402(h)(3) of this proposed rule has been determined by the Department to contain an additional collection of information requirement. Information on this additional requirement is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN.—NOTICE OF PROPOSED RULEMAKING (NPRM)—COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Community Development Technical Assistance Program—Unsolicited applications/proposals information for funding purposes.	24 CFR 570.402(h)(3)	200	1	200	80	16,000

List of Subjects in 24 CFR Part 570

Grant programs: Housing and community development, Technical assistance: Housing and community development, Small cities.

Accordingly, the Department proposes to amend 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section § 570.402 would be revised to read as follows:

§ 570.402 Technical assistance awards.

(a) *General.* (1) The purpose of the Community Development Technical Assistance Program is to increase the effectiveness with which States, units of general local government, and Indian tribes plan, develop, and administer assistance under Title I and section 810 of the Act. Title I programs are the Entitlement Program (24 CFR part 570, subpart D); the section 108 Loan Guarantee Programs (24 CFR part 570, subpart M); the Urban Development Action Grant Program (24 CFR part 570, subpart G); the HUD-administered Small Cities Program (24 CFR part 570, subpart F); the State-administered Program for Non-Entitlement Communities (24 CFR part 570, subpart I) and; the Discretionary Grant Programs for New Communities, the Insular Areas and Special Projects (24 CFR part 570, subpart E), and for Indian Tribes (24 CFR part 571). The section 810 program is the Urban Homesteading Program (24 CFR part 590).

(2) Funding under this section is awarded for the provision of technical expertise in planning, managing or carrying out such programs including the activities being or to be assisted thereunder and other actions being or to be undertaken for the purpose of the program, such as meeting applicable requirements (e.g., citizen participation, nondiscrimination, OMB Circulars), increasing program management or capacity building skills, attracting business or industry to CDBG assisted economic development sites or projects, assisting eligible CDBG subrecipients such as neighborhood nonprofits or small cities in how to obtain CDBG funding from cities and States. The provision of technical expertise in other areas which may have some tangential benefit or effect on a program is insufficient to qualify for funding.

(3) Awards may be made in response to:

(i) A solicitation for applications or proposals in the form of a publicly available document which invites the submission of applications or proposals within a prescribed period of time, or

(ii) Unsolicited proposals.

(b) *Definitions.* (1) *Areawide planning organization* (APO) means an

organization authorized by law or local agreement to undertake planning and other activities for a metropolitan or non-metropolitan area.

(2) *Technical assistance* means the provision of specialized skills or knowledge for the purpose of planning or carrying out assistance under Title I and section 810 of the Act by States, units of general local government, or Indian Tribes participating, or seeking to participate, in Title I or Urban Homesteading programs.

(c) *Eligible applicants.* Eligible applicants for award of technical assistance funding are: (1) States, units of general local government, APOs, and Indian Tribes; and (2) public and private non-profit or for-profit groups, and educational institutions capable of demonstrating their qualifications to provide technical assistance to governmental units and to carry out the required tasks in a timely and cost effective manner. An applicant group must be designated as a technical assistance provider to a unit of government's Title I program or Urban Homesteading program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(d) *Technical assistance objectives.* Proposals or applications submitted under this section which address at least one of the following objectives will be given priority:

(1) Expanding homeownership and affordable housing opportunities;

(2) Creating jobs and economic development where projects eligible under Title I and the Urban Homesteading Programs are involved giving priority to proposals or applications which fall within enterprise zones designated under State or Federal laws:

(3) Helping to end the tragedy of homelessness;

(4) Empowering the poor through resident management and homesteading;

(5) Enforcing fair housing for all;

(6) Making public housing drug-free; and

(7) Eliminating fraud, waste and mismanagement.

Proposals or applications which address other objectives related to Title I or Urban Homesteading needs will be given consideration to the extent that funds are available and the need is determined to be significant.

(e) *Eligible activities.* Activities eligible for technical assistance funding include:

(1) The provision of technical or advisory services;

(2) The design and operation of training projects, such as workshops, seminars, or conferences;

(3) The development and distribution of technical materials and information; and

(4) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, or Indian Tribes in planning, developing, or administering assistance under Title I and Urban Homesteading programs in which they are participating or seeking to participate.

(f) *Ineligible activities.* Activities for which costs are ineligible under this section include:

(1) In the case of technical assistance for States, administrative expenses incurred by a State in administering its State CDBG program for non-entitlement communities;

(2) The cost of carrying out the activities authorized under the Title I and Urban Homesteading programs, such as for the provision of public services, construction, rehabilitation, and administration;

(3) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(4) Research activities;

(5) The cost of identifying units of governments needing assistance; or

(6) Activities designed primarily to benefit HUD, or to assist HUD in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to the Congress.

(g) *Criteria for selection.* In determining whether to fund proposals or applications submitted under this section, the Department will review proposals or applications under the following criteria:

(1) *For unsolicited proposals.*

(i) The extent to which the project would aid specific activities currently funded with Title I funds by a State, unit of general local government or Indian Tribe, or specific activities planned to be funded with Title I funds, or otherwise demonstrates a clear and direct connection to, and ability to aid, eligible Title I or Urban Homesteading program participants in planning, developing or administering programs funded or to be funded with Title I or Urban Homesteading funds.

(ii) The extent to which the project addresses a signifcant Title I or Urban Homesteading Program need of eligible recipients, as identified in notices published by HUD or as otherwise justified by the proposer.

(iii) The extent to which the proposal is innovative or unique;

(iv) The extent to which the proposed work plan is clear, feasible, and cost-effective.

(v) The extent to which the project addresses one or more of the Technical Assistance Program objectives listed in paragraph (d) of this section;

(vi) The qualifications of the proposed provider of the technical assistance, including the extent to which it currently possesses the skills or knowledge to be provided;

(vii) The technical and financial feasibility of the proposed project and the methods to be used to provide skills and knowledge;

(viii) The extent to which the projected benefits or expected results of the proposed technical assistance are feasible;

(ix) The extent to which the project does not duplicate other on-going technical assistance projects;

(x) The availability of Community Development Technical Assistance funding; and

(xi) The extent to which the results can be transferred to other Title I or Urban Homesteading program participants.

(xii) Any criteria required by Federal Acquisition Regulation (FAR) 15.506–2, if the proposal is to result in a contract award.

(2) *For solicited applications and proposals.* The Department's criteria for review and selection of solicited applications or proposals will be described in its public announcement of the availability of a solicitation or the solicitation itself. Each solicitation must state or incorporate by reference all information neeessary to allow potential applicants or proposers to decide whether to submit an application or proposal, and to understand how applications or proposals will be evaluated, and the award made.

(h) *Submission procedures.* (1) Solicited proposals or applications shall be submitted in accordance with the time and place and content requirements stated in the Department's **Federal Register** Notice or request for proposal or application.

(2) Unsolicited proposals (an original and two copies) may be submitted, at any time, to: Director, Office of Program Policy Development, Community Planning and Development, 451 Seventh Street SW., Room 7148, Washington, DC 20410.

(3) Unsolicited proposals shall include the following:

(i) The Standard Form 424 as a face sheet, signed and dated by a person

authorized to represent and contractually or otherwise commit the applicant making the proposal;

(ii) A concise title and brief abstract of the proposed effort including the total cost;

(iii) A Statement of Work describing the specific project tasks and sub-tasks proposed to be undertaken;

(iv) A proposed budget showing the proposed costs and person-days of effort for each task and sub-task, by cost categories, with supporting documentation of costs and a justification of person-days of effort;

(v) A narrative statement that:

(A) Identifies specific activities to be aided which are currently funded with Title I or Urban Homesteading funds by a State, unit of general local government or Indian Tribe, or specific activities planned to be funded with Title I or Urban Homesteading funds, or otherwise demonstrates a clear and direct connection to, and ability to aid, eligible Title I or Urban Homesteading program participants in planning, developing or administering programs funded or to be funded with Title I or Urban Homesteading funds.

(B) Demonstrates the extent to which the proposed Statement of Work addresses one or more of the Technical Assistance Program objectives listed in paragraph (d) of this section;

(C) Provides the names of each eligible Title I or Urban Homesteading State, units of local government, or Indian Tribe expected to be assisted under the proposal;

(D) Demonstrates that a significant Title I or Urban Homesteading program need will be addressed for each State, unit of local government, or Indian tribe proposed for assistance.

(E) Demonstrates the qualifications of the proposed provider of the technical assistance, including a brief description of the organization and the extent to which it currently possesses the skills or knowledge to be provided, previous experience in the field, and names and resumes of the key personnel who would be involved;

(F) Provides a work plan which describes the planned schedule; identifies steps in the work process required for completing the work; and the period of time needed to accomplish each step; and describes the financial and other resources allocated to each task or activity.

(G) Describes benefits or expected results of the proposed technical assistance.

(vi) A letter of designation where required under § 570.402(c), for each proposed State, local government, or Indian tribe to be assisted, must be signed by the Chief executive officer. The letter should indicate the community's need for the technical assistance proposed and designate the applicant as a provider.

(4) An unsolicited proposal may include data that the proposer does not want disclosed for any purpose other than evaluation.

(i) If the proposer wishes to restrict the proposal, the title page must be marked with the following legend:

Use and Disclosure of Data

The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal, *provided that* if a contract, grant or cooperative agreement is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract, grant or cooperative agreement. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in pages _____.

(ii) The proposer shall also mark each restricted page with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

(i) *Approval procedures.*—(1) Acceptance. HUD's acceptance of a proposal for review does not imply a commitment to provide funding.

(2) *Notification.* HUD will provide notification of whether a project will be funded or rejected.

(3) *Form of award.* (i) HUD will award technical assistance funds as a grant, cooperative agreement or contract, consistent with this section, the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308, the HUD Acquisition Regulation, and the Federal Acquisition Regulation.

(ii) When HUD's purpose is to support or stimulate a recipient-initiated or on-going technical assistance activity, an assistance instrument (grant or cooperative agreement) shall be used. A grant instrument will be used when substantial Federal involvement is not anticipated. A cooperative agreement will be used when substantial Federal involvement is anticipated. When a cooperative agreement is selected, the agreement will specify the nature of HUD's anticipated involvement in the project.

(iii) A contract shall be used when HUD's primary purpose is to obtain a provider of technical assistance to act on the Department's behalf. In such cases, the Department will define the specific tasks to be performed. In accordance with the Federal Grant and Cooperative Agreement Act, nothing in paragraph (i)(3) of this section shall preclude the Department from awarding a procurement contract in any other case when it is determined to be in the Department's best interests.

(4) Administration. Project administration will be governed by the terms of individual awards and relevant program regulations and statutory requirements. As a general rule, proposals will be funded to operate for one to two years, and periodic and final reports will be required.

(j) *Environmental and intergovernmental review.* The requirements for Environmental Reviews and Intergovernmental Reviews do not apply to technical assistance awards.

(Approved under OMB Control Numbers 2535–0085 and 2535–0084)

Dated: November 21, 1989.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89–28788 Filed 12–8–89; 8:45 am]

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Part V

Department of Transportation

Coast Guard

46 CFR Parts 38, 54, 98, and 151

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 38, 54, 98, and 151

[CGD 85-061]

RIN 2115-AC18

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending the regulations that govern internal inspection and hydrostatic test intervals for pressure vessel cargo tanks on barges that transport liquefied gaseous cargoes and Grade A flammable liquids. This rulemaking was initiated following industry requests that the Coast Guard review and amend existing inspection requirements. These amendments will reduce industry's compliance costs due to the lengthening of inspection intervals. The present level of safety is maintained by these amendments through the use of more sophisticated examination technologies.

DATES: This Interim Final Rule is effective on January 10, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 1990. Comments on the amendments to the examination intervals for chlorine tanks, discussed in preamble paragraph 11, must be received before March 12, 1990.

ADDRESSES: Comments on the modifications to the examination intervals for chlorine tanks (see § 151.05-31(p)), discussed in preamble paragraph 11, should be submitted to Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for inspection or copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 3600, 2100 2nd Street SW., Washington, DC 20593-0001, between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The regulatory evaluation and environmental assessment have been prepared and placed in the rulemaking docket and may be inspected or copied at the same address. Copies may also be obtained by contacting CDR Hersh (see **FOR FURTHER INFORMATION CONTACT**). The Navigation and Vessel Inspection Circular (NVIC) titled "Guidelines for Nondestructive Testing of Pressure Vessel Type Cargo Tanks Aboard Tank Barges" may be obtained by mailing a request to Commanding Officer, Marine Safety Center, 2100 2nd Street, SW., Washington, DC 20593-0100, ATTN: NVIC's, Phone 202-267-0444.

FOR FURTHER INFORMATION CONTACT: CDR John G. Hersh, Standards Development Branch, Office of Marine Safety, Security, and Environmental Protection, telephone (202) 267-1181. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On September 8, 1987, a notice of proposed rulemaking (NPRM), entitled Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges, was published in the **Federal Register** (52 FR 33841). On December 1, 1987, in response to 10 requests, the deadline for submission of comments was extended from December 7, 1987, until March 7, 1988 (52 FR 45665). The Coast Guard received 13 letters commenting on the proposed rulemaking. A public hearing was not requested nor held.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR Geoffrey D. Powers, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Background

The NPRM proposed to extend the internal examination interval to 10 years for most pressure vessel type cargo tanks carrying cargoes which presently qualify for a maximum internal examination interval of eight years. Tanks dedicated to propylene oxide service would have to be internally inspected at a maximum interval of 10 years, and the periodic hydrostatic testing requirement would be removed. It was also proposed to require pressure vessel cargo tanks that are 25 years of age and older to be nondestructively tested at five year intervals. New design and fabrication requirements for those tanks permitted by regulation to be constructed as Class II and III pressure vessels were also proposed.

Discussion of Comments and Changes

Thirteen comment letters from eleven interested parties were received on the following issues raised in the NPRM.

The single most controversial proposal of the NPRM concerned nondestructive testing (NDT) of pressure vessel cargo tanks subject to the proposed 10 year internal examination interval. The proposed rules would require these tanks to undergo NDT after 25 years of service and every five years thereafter. Paragraphs 1 through 7 below address the various concerns regarding this NDT proposal.

1. One comment suggested that the proposed NDT requirements are not justified by the industry's experience with pressure vessel cargo tanks over the last 20-25 years. Two comments noted that tanks examined after 16 or more years of service show little difference from tanks inspected at the end of eight or less years of service. The Coast Guard agrees that the safety record for these tanks has been very good, but is concerned about cyclical stress failure on older tanks. The average age of in-service tanks is 18½ years; 30 vessels (16% of the affected barge fleet) are already 25 years of age or older. One comment noted that the ASME Code for pressure vessel design does not address actual expected service life of tanks and suggested that operational experience shows a service life well in excess of 40 years. Nonetheless, the Coast Guard suggests that the acutal service life of these tanks remains unknown. The Coast Guard considers it inappropriate to wait for the first tank failure to indicate the service life of these tanks carrying hazardous cargo in bulk. Therefore, a modified requirement to conduct NDT on older pressure vessel tanks is retained.

2. One comment suggested that it would be inappropriate to require NDT without a specific flaw in mind. The Coast Guard is sensitive to this argument and does indeed have specific flaws and specific locations on the tank in mind, i.e., fatigue fractures in high stress areas (saddle horns and mountings). Therefore, the modified requirement to conduct NDT on pressure vessel cargo tanks is retained.

3. Three comments suggested that metal fatigue is the most significant potential cause of barge mounted tank failure. The Coast Guard agrees. Fatigue failures are characterized by the action of repeated or fluctuating stresses that have cycled a large number of times. Barge mounted tanks are subject to fluctuating stresses in a number of ways. The most significant are bending and torsion caused by the bending and twisting of the hull, pressure changes during loading and unloading, impact caused by the barge bouncing across waves and against lock walls, and longitudinal forces caused by liquid moving in the tanks. All of these stresses are transmitted to the tank through the supports (saddles). Surface discontinuities such as grooves, notches, attachments, etc. act to concentrate the stress. The saddle support attachments

to the tank represent a surface discontinuity and concentrate the applied stresses making this the most likely fatigue failure location.

Two comments noted that metal fatigue initiates at the surface at a point of stress concentration. The Coast Guard agrees. Fatigue begins as a minute crack which continues to propagate with time until it reaches a critical size and rupture occurs. Fatigue does not initiate at the center of a material cross section as this is a point where applied stresses are minimum; therefore, inspection for subsurface defects or material flaws is not necessary after initial construction. Since fatigue failures initiate at the surface, the surface at stress risers should be where NDT is focused. Such NDT methods would include visual, dye penetrant, and magnetic particle (wet or dry). Acoustic emission testing, radiography, and ultrasonic shear wave testing are more suitable for the detection of subsurface material or welding defects.

Two comments suggested that shear wave and acoustic emission results where highly subjective and that improper interpretation of the results could lead to needless repairs. The Coast Guard agrees.

In summary, the Coast Guard agrees that surface initiating fatigue fracture at a point of stress concentration is the most likely failure mechanism and that magnetic particle and dye penetrant are the most suitable NDT methods for detecting surface cracks (as well as the stress corrosion cracking likely to occur in tanks in corrosive service).

For these reasons the Coast Guard has retained the requirement for NDT. Owners of tanks requiring NDT testing must submit proposals (as required by §§ 38.25–3, 98.25–97, and 151.04–7) to the Officer in Charge, Marine Inspection. These NDT proposals must include the test methods and procedures to be used, all of which must be in accordance with Section V of the ASME Boiler and Pressure Vessel Code. In evaluating these proposals the OCMI will consider the suitability of the proposed NDT methods in detecting the type of flaws of concern on the particular tank to be examined.

4. Two comments pointed out that visual examination is a method of NDT listed in Section V of the ASME Boiler and Pressure Vessel Code and recommended that the existing policy of visual examination instead of other NDT methods be continued. The Coast Guard notes that Article 9, of Section V of the ASME Boiler and Pressure Vessel Code states that other than when used in the interpretation of the various nondestructive examination methods in the Code (i.e., radiographic, ultrasonic, dye penetrant, magnetic particle, eddy current, leak testing, and acoustic emission), generally visual examination is used only to determine the surface condition of a part, alignment of mating surfaces, shapes, or evidence of leaking.

The Coast Guard is concerned with cyclical fatigue fractures on older tanks and does not agree that visual examination is adequate to detect this type of flaw. During a recent examination of shore service tanks being converted for barge service, fluorescent magnetic particle inspection revealed over 30 cracks in circumferential and longitudinal welds. Most were 3 to 4 inches long and ¼ to ½ inch deep. One was 13 inches long, another was 27 inches long. All of the cracks were detected by fluorescent magnetic particle NDT; none of the cracks found were visible to the naked eye when the ultraviolet (black light) was turned off. As a consequence of the preceding the Coast Guard determined it was necessary to retain the requirement for NDT.

5. Eight comments suggested various internal examination intervals and NDT strategies. One comment suggested a 12 year internal examination interval until the tank reaches age 24, then an 8 year internal interval with surface crack detecting NDT to be conducted during the internal examination. One comment suggested a 12 year internal examination interval of the tank until age 24, then an 8 year internal interval without NDT. Two comments suggested a 12 year internal interval with surface crack detecting NDT during each internal examination. Two comments suggested a 12 year internal examination interval without NDT. Two comments suggested a 12 year internal examination interval with surface crack detecting NDT to begin at year age 36 and to be conducted during the internal examination. One comment suggested a 10 year internal interval with surface crack detecting NDT to begin at age 30 and to be conducted during the internal examination. Two elements are prevalent in the suggested strategies: (1) Older tanks should receive closer scrutiny either by reducing the interval between examinations or by adding an NDT requirement; and (2) NDT intervals should match a tank's internal examination interval. The Coast Guard agrees and has incorporated both these elements in this rule (see preamble paragraphs 6 and 7 below for the discussion of the NDT interval and see preamble paragraphs 9 and 10 below for the discussion of tank internal examination intervals).

6. The Coast Guard believes that the strong negative reaction received in the comments to the proposed NDT requirement (beginning at year 25 and repeated at five year intervals thereafter) can be attributed, in a large part, to industry's reluctance to remove insulation in order to conduct NDT (thickness gauging, dye penetrant or magnetic particle) on the tank's external surface. The comments discuss how insulation removal destroys a tank's vapor barrier which may be meticulously maintained and is expensive to re-establish. Given the options of insulation removal to permit external NDT or gas freeing to permit internal NDT, the comments indicate that owners would opt to gas free. The Coast Guard did not anticipate industry's reluctance to remove insulation and assumed that NDT would easily and inexpensively be conducted on the tank external surface without the need to gas free the tank.

The Coast Guard considered the following facts. Design life of these tanks is 20 to 30 years. The tanks were built with oversized scantlings because exact service loads were unknown and estimated. No definitive studies have been done by the Coast Guard or members of the industry to determine the likelihood of tank failure due to fatigue or stress corrosion cracking, and the approximate fatigue life. There are now more than 20 tanks with ages between 30 and 40 years. NDT methods are available which will allow testing for exterior surface cracks from the interior of a tank, but would require gas freeing to be done. The risks associated with shipping of hazardous cargoes do not merit waiting for failure, especially since testing will give early failure indications and lessen the chance of catastrophic failure. In past years it has been the policy of many OCMIs to extend the presently required internal examination interval of eight years, by one year increments, to a total of twelve years in some cases.

In response to industry's concerns, and in consideration of the above facts, the Coast Guard has chosen a moderate course which will provide an equivalent or higher level of safety than that presently required. The proposed NDT interval has been changed (in §§ 38.25–1(a)(5), 98.25–95(a)(4), and 151.04–5(1)), to 10 years, to coincide with the cargo tank internal examination interval. Matching the NDT interval with the cargo tank internal examination interval will afford owners and operators the opportunity to conduct the required NDT on the tank's interior surface, and avoid the need to remove insulation for the

sole purpose of conducting NDT. It is not contemplated that extensions of the internal examination interval will be granted, except in unusual circumstances.

7. As discussed in preamble paragraph 5 above, comments on the NPRM suggested a starting time (tank age) for NDT ranging from year 12 to year 36. In each case a starting time was suggested that was a multiple of the proposed tank internal examination interval. The Coast Guard is sensitive to the rationale behind this concept, i.e., facilitating NDT on the tank internal surface during a time when the tank is already gas free to meet a tank internal examination requirement. Accordingly, §§ 38.25–1(a)(5), 98.25–95(a)(4), and 151.04–5(l) have been changed to require that tanks with a 10 year internal examination interval, that are 30 years old and older, be nondestructively tested during each internal examination.

8. Three comments suggested that, as an aid to industry and Coast Guard marine inspectors, uniform guidance identifying the types of defects that are of concern and their locations on the tanks should be provided by the Coast Guard to assist in the development of the NDT proposals required by §§ 38.25–3, 98.25–97, and 151.04–7. The Coast Guard agrees. Two comments suggested that without some form of guidance, to Officers in Charge, Marine Inspection, and barge owners/operators alike, the NDT program would lack the necessary degree of consistency. The Coast Guard agrees. To assist industry in developing NDT proposals that will target the locations on the tank of most concern to the Coast Guard and utilize the NDT methods most suitable for detecting these flaws, a NVIC (Navigation and Vessel Inspection Circular) titled "Guidelines for Nondestructive Testing of Pressure Vessel Type Cargo Tanks Aboard Tank Barges" has been developed. Copies of this NVIC may be obtained by mailing a request to the office listed in **ADDRESSES**. Information to assist Officers in Charge, Marine Inspection, in the evaluation of nondestructive testing proposals will be incorporated into the Marine Safety Manual.

9. Two comments suggested it was inappropriate to justify the proposed 10 year internal examination interval based upon ANSI/NB–23 "National Board Inspection Code—1985" section U–106b, which states that the maximum period between internal inspection of pressure vessels should not exceed one-half of the remaining corrosion rate life or 10 years, whichever is less. The comments suggest that the Coast Guard overlooked section U–106c which states that vessels with a corrosion rate known to be zero need not be inspected internally. However, the Coast Guard has noted that for pressure vessels not undergoing internal inspections the provisions of U–106c require periodic external inspections, including NDT thickness measurements.

Given the options of: (1) Gas freeing a tank to permit internal examinations at 10 year intervals at the same time as regularly scheduled drydockings, internal structural examinations, safety valve tests, and inspections and reinspections for certification; or, (2) periodic external NDT thickness measurements requiring insulation removal, the Coast Guard believes that the 10 year internal examination interval is preferable.

10. Three comments noted that in the preamble to the NPRM the Coast Guard justified the proposed 10 year cargo tank internal examination interval, in part, to align it with the drydock interval (5 years for salt water service vessels and 10 years for fresh water service vessels). Because shipyards normally require gravity type tanks to be gas free as a condition of drydocking, the Coast Guard believed that alignment of the drydock and cargo tank interval would avoid an additional gas freeing expense. The comments pointed out, however, that shipyards do not require pressure vessel type cargo tanks to be gas free before drydocking or conducting hull repairs; therefore, alignment of these two inspection intervals does not necessarily result in a savings of gas freeing costs. Nonetheless, the Coast Guard believes there is an economic benefit to the industry and a workload benefit to Officers in Charge, Marine Inspection, in aligning the cargo tank internal examination interval with the drydock interval. A 10 year cargo tank internal examination interval will allow cargo tank examinations, drydock examinations, safety valve tests, internal structural examinations, and inspections and reinspections for certification to be conducted at the same time, reducing the amount of time a vessel is out of service. Therefore, the Coast Guard has retained in §§ 38.25–1(a)(1)(i), 98.25–95(a)(1)(i), and 151.04–(5)(b)(3)(i), the 10 year internal examination interval for most pressure vessel cargo tanks.

Tanks carrying cargoes which exhibit corrosive behavior or cargoes capable of forming corrosive by-products when contaminated by water will continue to be inspected more frequently than 10 years, as required by 46 CFR subchapter O (table 151.05). Included in this category are lined pressure vessel tanks carrying inorganic acids.

11. Two commenters recommended that the internal examination and hydrostatic test interval for pressure vessel tanks in chlorine service be extended to three years. Both comments suggested that industry experience demonstrates that the current two year interval makes no contribution to safety and brings with it the potential of accelerated corrosion of the interior of the tank because of water used to wash the tanks when cleaning and gas-freeing. Although only two comments were received, the commenters represented practically all of the chlorine barge transportation industry in Canada and the U.S. The Chlorine Institute membership produces 98% of the total North American chlorine capacity and has other members involved in the packaging, transportation and use of chlorine. The second comment was from American Waterways Operators representing inland transporters of liquified gaseous cargoes. The Chlorine Institute stated that the six-year hydrostatic test interval for shoreside bulk storage tanks, which are twice as large as barge tanks, has proven very satisfactory from a safety point of view, and based upon their experience they believe a four year internal examination and hydrostatic test interval would be safe. However, they agree to verification of the three year interval first.

In the NPRM, the Coast Guard explained that although it recognized that increasing the internal examination and hydrostatic testing interval would reduce tank deterioration, it was reluctant to propose regulatory requirements less stringent than standards set for other models of bulk chlorine transportation. The present requirement for a biennial (two-year) hydrostatic test and internal tank examination was adopted based on a rail car standard dating back to 1909 and recommended by the Chlorine Institute at that time. The Federal Railroad Administration and the Federal Highway Administration still require biennial hydrostatic tests for rail cars and tank trucks, respectively.

The Coast Guard agrees that since water used to clean chlorine tanks is the major source of chlorine tank corrosion, increasing the examination interval should reduce internal tank deterioration. Also, chlorine tanks are not insulated, which allows examination of the tank exterior at all times. The Coast Guard has been convinced by these additional arguments, and accordingly the internal examination interval in table 151.05 and the

hydrostatic test interval in § 151.50–31(p) have been changed to three years. Despite the facts that this change in the Coast Guard's position would reduce a burden on industry and would be within the scope of the NPRM, and that no negative comments concerning this matter were received, the Coast Guard feels that some interested persons may object to the three year interval. Under these circumstances, the Coast Guard will continue to accept comments on just this issue to determine if any further rulemaking is necessary.

12. One comment suggested that the Coast Guard discontinue the current practice of having a marine inspector physically witness the safety relief valve tests and the hydrostatic testing of chlorine tanks. The comment points out that this practice requires the precise timing of the arrival of the inspector and a carefully arranged work schedule for the barge owner. The comment suggests that third party or owner testing would not decrease public safety, would be a workload benefit to the Coast Guard, and would be a scheduling benefit to the barge owner. The Coast Guard rejects this recommendation. While the Coast Guard agrees that the recommendation might reduce scheduling problems, an equivalent level of safety would not be provided. Safety valves are considered to be a critical safety feature and testing must be witnessed by the Coast Guard. Hydrostatic tests, as well as internal examinations, require subjective evaluations and would best be witnessed by the Coast Guard.

13. One comment noted that the proposed removal of § 151.01–5 is unnecessary since it was deleted in the March 12, 1987 final rule (52 FR 7765) inplementing MARPOL Annex II. Accordingly, this item has been omitted from this rulemaking.

14. One comment incorrectly assumed that § 151.04–5(b)(3) would extend the internal examination interval for all tanks carrying cargoes at temperatures above −67 °F in pressure vessel type cargo tanks. Section 151.04–5(b) only applies to those tanks carrying cargoes with a "G" in the column entitled "Tank internal inspect. period-years" in Table 151.05.

15. One comment objected to the provision in § 54.20–3 which prohibits the use of joggled longitudinal seams and limits the use of joggled connections to circumferential joints on Class II and Class III pressure vessels. The commenter suggested that the prohibition should be limited to pressure vessel cargo tanks. The prohibition on the use of joggled longitudinal seams is not a new provision; this rule simply relocates this provision in the regulations. Prior to this rulemaking this provision was located in footnote 6 to Table 54.01–5(b)—Pressure Vessel Classifications. Footnote 6 did not directly prohibit the use of joggled seams, or butt welded joints with one plate edge offset (as referred to in the ASME Code), for longitudinal welds, but did reference Figure UW–13.1(k) and table UW–12 of the ASME Code. This indirectly prohibited the use of butt welded joints with one plate edge offset because the referenced sections of the ASME Code prohibited their use. The new rule more clearly explains the restrictions on the use of these joints.

16. One comment suggested that the proper sequencing of weldments would be more productive, as a quality assurance method, than the radiography proposed in § 54.25–8(c). The Coast Guard recognizes the benefits associated with the proper sequencing of weldments. However, the Coast Guard prefers the requirement for spot radiography because: (1) The extended internal inspection intervals in this rulemaking were based, in part, upon the service experience of pressure vessel cargo tanks built over the past 30 years on which radiography was routinely performed; (2) sequencing would require approval at the plan review stage and verification during fabrication which would potentially add significant delays to the production process; and (3) sequencing will not eliminate welding defects and would leave unanswered the question of critical discontinuities.

17. This rule modifies § 54.25–10, from what was proposed in the NPRM, by omitting table 54.25–10(d) and the last two sentences in paragraph (d). These sentences and the Table contained requirements for impact energies of Charpy specimens. Identical provisions are contained in UG–84 of section VIII of the ASME Code, and 46 CFR 54.01–1 already requires pressure vessels to be designed, constructed, and inspected in accordance with section VIII. To include these required Charpy specimen impact energies in § 54.25–10 would be redundant, and they have been removed.

18. This rule changes § 151.04–5 by adding modifications to paragraph (c) which were not included in the NPRM. These modifications are simply editorial changes to make the requirements for the external examination of pressure vessel cargo tanks in § 151.04–5 consistent with those in §§ 38.25–1 and 98.25–95. The substance of the requirements in § 151.04–5 has not been changed; the wording has been standardized to be more consistent with the wording in parts 38 and 98.

Incorporation by Reference

The material in §§ 38.01–3, 98.01–3, and 151.01–2 has been approved for incorporation by reference by the director of the Federal Register under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in those sections. If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulations Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to follow the progress of this action in the Unified Agenda.

E.O. 12292 and DOT Regulatory Policies and Procedures

The regulations are considered by the Coast Guard to be non-major under Executive Order 12291. In addition, these regulations are considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). An evaluation has been prepared and placed in the public docket as required by the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5, dtd May 22, 1980). The economic impact analysis was based on information supplied in response to the 1982 CTAC questionnaire and information provided in response to the ANPRM.

One of the comments to the NPRM contained cost figures. This comment argued that the estimated $500 cost to conduct NDT on a tank 30 years of age and older, used in the draft evaluation, was too low. This comment suggested $1,500 to $2,000 as a more realistic estimate. The Coast Guard feels that $1,500 to $2,000 is too high an estimate for the limited amount of NDT envisioned as necessary to confirm the condition of older tanks. However, to be conservative in its evaluation, the calculations to determine the economic benefit associated with this rulemaking used NDT costs ranging from $500 to $1,500 per tank.

The annual savings for the barge industry is estimated to be $183,462 (in 1986 dollars). This is an increase of

$87,449 from that estimated in the draft regulatory evaluation. This difference in estimated economic savings is primarily attributable to the extension of the inspection intervals for chlorine tanks. The draft regulatory evaluation was based on the inspection interval for chlorine tanks remaining unchanged. The final regulatory evaluation includes the benefit that should be realized by the 47 chlorine barges with the easing of the internal inspection and hydrostatic test intervals from two to three years.

The design and fabrication regulation modifications (contained in part 54) will also affect any self-propelled vessels that may be built with pressure vessel type tanks carrying cargoes at ambient temperatures. However, there are no existing vessels in this category, nor is it likely that any will be built in the foreseeable future. Therefore, the Coast Guard does not consider the economic impact on self-propelled vessels to be significant.

Regulatory Flexibility Act

These regulations would affect all companies that own or operate barges that are within the scope of this rulemaking; some of these companies may be small entities. For this rulemaking, the Coast Guard considers a small entity to be one operating a single barge. The amendments will provide an economic benefit to these barge owners and operators by reducing the frequency of costly inspections. The Coast Guard does not consider this economic impact to be significant. The estimated cost savings of $1,042 per barge per year represents about 2 days revenue for this type of barge. The Coast Guard has identified ten companies as small entities and the cost savings associated with these amendments will not be significant; therefore, the analysis requirements of 5 U.S.C. 603 and 604 do not apply. The Coast Guard certifies in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The affected section numbers are §§ 38.25–3, 98.25–97 and 151.04–7. The corresponding OMB Control No. is 2115–0563.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has assessed the environmental impacts of these regulations and has determined that they will not be significant. Reduced tank cleaning will result in a slight reduction in air and water pollution. Due to the small number of barges that would be affected by these regulations, this slight reduction is considered insignificant when compared to other potential sources of environmental pollution. The use of more sophisticated examination methods on older cargo tanks is expected to decrease the probability of catastrophic tank failure and improve the reliability of these tanks. This effect is more important as a safety benefit because an uncontrolled release of the type of cargo generally carried in these tanks presents an immediate threat to life but the gases tend to rapidly dissipate, thereby posing no persistent environmental threat.

List of Subjects

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety.

46 CFR Part 54

Reporting and recordkeeping requirements, vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

Regulations

For the reasons set out above, parts 38, 54, 98, and 151, of chapter I, title 46, Code of Federal Regulations, are amended as follows:

PART 38—[AMENDED]

1. The authority citation for part 38 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 38.01–3 is added, to read as follows:

§ 38.01–3 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller #28518, Columbus, OH, 43228–0518

ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing"..... 38.25–3(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, N.Y. 10017

ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986).....38.25–3(a)(1)

3. In § 38.25–1, paragraphs (a)(1), and (a)(3) and (b) are revised, and paragraphs (a)(4), (a)(5), and a note to follow paragraph (b) are added, to read as follows:

§ 38.25–1 Tests and inspections—TB/ALL.

(a) * * *

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure vessel type cargo tank on an unmanned barge carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(1)(i) of this section.

* * * * *

(3) The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation.

or the thickness of the tanks may be gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(4) If required by the Officer in Charge, Marine Inspection, the owner shall conduct nondestructive testing of each tank in accordance with § 38.25–3.

(5) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of that tank, in accordance with § 38.25–3, during each internal inspection.

(b) If the marine inspector considers a hydrostatic test necessary to determine the condition of the tank, the owner shall perform the test at a pressure of 1½ times the tanks's—

(1) Maximum allowable pressure, as determined by the safety relief valve setting; or

(2) Design pressure, when cargo tanks operate at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements.

Note: See the ASME Code, Section VIII, Appendix 3 for information on design pressure.

* * * * *

4. Section 38.25–3 is added, to read as follows:

§ 38.25–3 Nondestructive testing—TB/ALL.

(a) Before nondestructive testing may be conducted to meet § 38.25–1 (a)(4) and (a)(5), the owner shall submit a proposal to the Officer in Charge, Marine Inspection for acceptance that includes—

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

PART 54—[AMENDED]

5. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

6. In § 54.01–1, Table 54.01–1(a) is amended by changing the entry "USC–6 modified by" to read "UCS–6 modified by", "USC–56 modified by" to read "UCS–56 modified by", "USC–57 modified by" to read "UCS–57, UNF–57, UHA–33, and UHT–57 modified by", and "USC–65 through UCS–67 replaced by" to read "UCS–65 through UCS–67 replaced by" under the column heading "Paragraphs in section VIII, ASME Code [1] and disposition".

7. In § 54.01–5, Table 54.01–5(b) is revised to read as follows:

§ 54.01–5 [Amended]

* * * * *

TABLE 54.01–5(b)—PRESSURE VESSEL CLASSIFICATION [8]

Class	Service contents	Class limits on pressure and temperature	Joint requirements [4,6,7]	Radiography requirements, section VIII, ASME Code [4,7]	Post weld heat treatment required [4,7]	Shop inspect. required	Plan approval required
I	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.[2]	Over 600 p.s.i. or 700 °F. Over 600 p.s.i. or 400 °F.	(1) For category A; (1) or (2) For category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with Table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME code.	Yes [4]	Yes.[4]
I–L Low temperature.	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.[2]	Over 250 p.s.i. and service temperature below 0 °F. Over 250 p.s.i. and service temperature below 0 °F.	(1) for categories A and B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. No backing rings or strips left in place.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code.	Yes	Yes.
II	(a) Vapor or gas. (b) Liquid (c) Hazardous materials[2,3,6]	30 through 600 p.s.i. or 275° through 700 °F. 200 through 600 p.s.i. or 250° through 400 °F.	(1) or (2) for category A. (1), (2), or (3) for category B. Categories C and D in accordance with UW–16 of ASME Code.	Spot, unless exempted by UW–11(c) of ASME Code.	In accordance with section VIII of ASME Code.	Yes [4]	Yes.[4]
II–L Low temperature.	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.	0 through 250 p.s.i. and service temperature below 0 °F. 0 through 250 p.s.i. and service temperature below 0 °F.	(1) for category A; (1) or (2) for category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Spot. The exemption of UW–11(c) of ASME Code does not apply.	Same as for 1–L except that mechanical stress relief may be substituted if allowed under Subpart 54.30 of this chapter.	Yes [4]	Yes.[4]

TABLE 54.01-5(b)—PRESSURE VESSEL CLASSIFICATION [8]—Continued

Class	Service contents	Class limits on pressure and temperature	Joint requirements [1,6,7]	Radiography requirements, section VIII, ASME Code [3,7]	Post weld heat treatment required [3,7]	Shop inspect. required	Plan approval required
III	(a) Vapor or gas. (b) Liquid (c) Hazardous materials [2,3,4]	Under 30 p.s.i. and 0° through 275 °F. Under 200 p.s.i. and 0° through 250 °F.	In accordance with Section VIII of ASME Code.	Spot, unless exempted by UW-11(c) of ASME Code.	In accordance with Section VIII of ASME Code.	Yes	Yes.

[1] Welded joint categories are defined under UW-3 of the ASME Code. Joint types are described in Table UW-12 of the ASME Code, and numbered "(1)," "(2)," etc.
[2] See § 54.20-2.
[3] See §§ 54.25-8(c) and 54.25-20(d).
[4] See §§ 54.01-15 and 54.10-3 for exemptions.
[5] Specific requirements modifying Table UCS-56 of the ASME Code are found in § 54.25-7.
[6] See § 54.20-(3) and (f)
[7] Applies only to welded pressure vessels.
[8] Does not include special requirements for heat exchanger. Section 54.01-2 contains an explanation of those special requirements.

8. In § 54.01-5, paragraph (d)(2) is revised, to read as follows:

§ 54.01-5 Scope (Modifies U-1 and U-2).

* * * * *

(d) * * *

(2) Meet § 54.01.01-35, § 54.20-3(c), and § 54.25-3 of this part;

* * * * *

9. Section 54.05-6 is revised, to read as follows:

§ 54.05-6 Toughness Test Temperatures.

Each toughness test must be conducted at temperatures not warmer than −20 °F or 10 °F below the minimum service temperature, whichever is lower, except that for service at or below −320 °F, the tests may be conducted at the service temperature in accordance with § 54.25-10(a)(2).

10. In § 54.20-3, paragraphs (c) and (f) are added, to read as follows:

§ 54.20-3 Design (modifies UW-9, UW-11(a), UW-13, and UW-16).

* * * * *

(c) A butt welded joint with one plate edge offset, as shown in Figure UW-13.1(k) of the ASME Code, may only be used for circumferential joints of Class II and Class III pressure vessels.

* * * * *

(f) Joints in Class II or III pressure vessel cargo tanks must meet the following:

(1) Category A and B joints must be type (1) or (2).

(2) Category C and D joints must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.

11. In § 54.25-8, the heading is revised and paragraph (c) is added, to read as follows:

§ 54.25-8 Radiography (modifies UW-11(a), UCS-57, UNF-57, UHA-33, and UHT-57).

* * * * *

(c) Each butt welded joint in a Class II or III pressure vessel cargo tank must be spot radiographed, in accordance with UW-52, regardless of diameter or thickness, and each weld intersection or crossing must be radiographed for a distance of at least 10 thicknesses from the intersection.

12. In § 54.25-10, the undesignated paragraph that follows the formula in paragraph (a)(2) is revised and paragraph (d) is added, to read as follows:

§ 54.25-10 Low Temperature Operation—Ferritic Steels (replaces UCS-65 through UCS-67).

(a) * * *

(2) * * *

Only temperatures due to refrigerated service usually need to be considered in determining the service temperature, except pressure vessel type cargo tanks operating at ambient temperatures must meet paragraph (d) of this section. "Refrigerated service", as used in this paragraph, means a service in which the temperature is controlled by the process and not by atmospheric conditions.

* * * * *

(d) Weldments and all materials used in pressure vessel type cargo tanks operating at ambient temperatures and constructed of materials listed in Table UCS-23 must pass Charpy impact tests in accordance with UG-84 at a temperature of −20 °F or colder, except as provided by paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is ⅝ inch or less, unless otherwise indicated:

(i) A-182, normalized and tempered.

(ii) A-302, Grades C and D.

(iii) A-336, Grades F21 and F22 that are normalized and tempered.

(iv) A-387, Grades 21 and 22 that are normalized and tempered.

(v) A-442, Grade 55 with a nominal thickness of 1" or less.

(vi) A-516, Grades 55 and 60.

(vii) A-533, Grades B and C.

(viii) All other plates, structural shapes and bars, and other product forms, except for bolting, if produced to a fine grain practice and normalized.

(2) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is 1¼ inch or less:

(i) A-203.

(ii) A-442, produced to a fine grain practice and normalized.

(iii) A-508, Class 1.

(iv) A-516, normalized.

(v) A-524.

(vi) A-537.

(vii) A-612, normalized.

(viii) A-662, normalized.

(ix) A-724, normalized.

(3) Charpy impact tests are not required for any of the following bolt materials:

(i) A-193, Grades B5, B7, B7M, and B16.

(ii) A-307, Grade B

(iii) A-325, Type 1.

(iv) A-449.

PART 98—[AMENDED]

13. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. The title of subpart 98.01 is revised, to read as follows:

Subpart 98.01—General.

15. The title of § 98.01-1 is revised, to read as follows:

§ 98.01-1 Applicability.

16. Section 98.01-3 is added, to read as follows:

§ 98.01-3 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller # 28518, Columbus, OH, 43228-0518
ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualification and Certification in Nondestructive Testing"..... 98.25-97(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, N.Y. 10017
ASME Boiler and Pressure Vessel Code, Section V, Nondestructive Examination (1986).....98.25-97(a)(1)

17. In § 98.25-95, paragraph (a) is revised, to read as follows:

§ 98.25-95 Tests and inspections.

(a) Each tank shall be subjected to the tests and inspections described in this section in the presence of a marine inspector, except as otherwise provided in this part.

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure-vessel type cargo tank on an unmanned barge described under § 151.01-25(c) of this chapter and carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(1)(i) of this section.

(2) An external examination of unlagged tanks and the visible parts of lagged tanks is made at each biennial inspection. The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation, or the thickness of the tanks may be gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(3) If required by the Officer in Charge, Marine Inspection the owner shall conduct nondestructive testing of each tank in accordance with § 98.25-97.

(4) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, and is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of each tank in accordance with § 98.25-97, during each internal inspection.

* * * * *

18. Section 98.25-97 is added, to read as follows:

§ 98.25-97 Nondestructive testing.

(a) Before nondestructive testing may be conducted to meet § 98.25-95(a) (3) and (4), the owner shall submit a proposal to the Officer in Charge, Marine Inspection for approval that includes—

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualifications and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

PART 151—[AMENDED]

19. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

20. Section 151.01-2 is added, to read as follows:

§ 151.01-2 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller #28518, Columbus, OH 43228-0518
ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualification and Certification in Nondestructive Testing"..... 151.04-7(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, NY 10017
ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986).....151.04-7(a)(1)

§ 151.03-37 [Amended]

21. Section 151.03-37 is amended by removing the Arabic numeral "8" and adding the Roman numeral "VIII", in the first sentence.

22. Section 151.03-38 is added, to read as follows:

§ 151.03-38 Nondestructive testing.

Nondestructive testing includes ultrasonic examination, liquid penetrant examination, magnetic particle examination, radiographic examination, eddy current, and acoustic emission.

23. In § 151.04-5, the introductory text of paragraph (b) and paragraphs (b)(3) and (c) are revised, paragraphs (d) through (i) are redesignated as paragraphs (f) through (k) respectively, and new paragraphs (d), (e), and (l) and a note following paragraph (e) are added, to read as follows:

§ 151.04-5 Inspection for Certification.

* * * * *

(b) Unless otherwise specified in table 151.05, cargo tanks are internally examined as follows:

* * * * *

(3) If the tank is a pressure-vessel type cargo tank, an internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection on an unmanned barge carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is a pressure type

cargo tank carrying cargo at temperatures colder than −67 °F (−55 °C).

* * * * *

(c) An external examination of unlagged tanks and the visible parts of lagged tanks is made at each biennial inspection. If the vessel has single skin construction, the underwater portion of the tank need not be examined unless deemed necessary by the Officer in Charge, Marine Inspection. If an external examination of the tank is not possible because of insulation, the owner shall ensure that—

(1) The amount of insulation deemed necessary by the marine inspector is removed during each cargo tank internal inspection to allow spot external examination of the tanks and insulation; or

(2) The thickness of the tanks is gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(d) If required by the Officer in Charge, Marine Inspection the owner shall conduct nondestructive testing of each tank designated by the Officer in Charge, Marine Inspection in accordance with § 151.04–7.

(e) If the Officer in Charge, Marine Inspection considers a hydrostatic test necessary to determine the condition of the tanks, the owner shall perform the test at a pressure of 1½ times the tank's—

(1) Maximum allowable pressure, as determined by the safety relief valve setting; or

(2) Design pressure, when cargo tanks operate at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements.

Note: See the ASME Code, Section VIII, Appendix 3 for information on design pressure.

* * * * *

(l) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, and is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of each tank in accordance with § 151.04–7, during each internal inspection.

24. Section 151.04–7 is added, to read as follows:

§ 151.04–7 Nondestructive testing.

(a) Before nondestructive testing may be conducted to meet § 151.04–5 (d) and (l), the owner shall submit a proposal to the Officer in Charge, Marine Inspection that includes—

(1) The test methods and procedures to be used all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

Table 151.05 [Amended]

25. Table 151.05—Summary of Minimum Requirements is amended as follows:

(a) In the column entitled "Tank internal inspect. period—years":

(1) Remove the numeral "8" and add the letter "G" for the following cargoes, listed in the column entitled "Cargo identification/Name/Pressure/Temp.":

Ammonia, anhydrous/Press/Amb;
Butadiene, butylene mixtures (containing acetylenes)/Press/Amb;
Butadiene/Press/Amb;
Dichlorodifluoromethane/Press/Amb;
Dimethylamine/Press/Amb; and
Monochlorodifluoromethane/Press/Amb;

(2) Remove the numeral "2" and add the numeral "3", for the cargo "Chlorine/Press/Amb"; and

(3) Remove the numeral "4" and add the letter "G", for the cargo "Propylene oxide/Press/Amb"; and

(b) In the column entitled "Special Requirements (Section)", for the cargo "Sulfur dioxide/Press/Amb" (listed in the column entitled "Cargo Identification/Name/Pressure/Temp"), remove the section number "151.50–35" and add "151.50–84".

§ 151.50–10 [Amended]

26. Section 151.50–10(p) is redesignated as § 151.50–12(o).

27. In § 151.50–10 paragraphs (q) and (r) are redesignated as paragraphs (p) and (q) respectively.

28. In § 151.50–31, paragraph (p) is revised, to read as follows:

§ 151.50–31 Chlorine

* * * * *

(p) During each internal inspection, each cargo tank must be tested hydrostatically to 1½ times the maximum allowable pressure as determined by the safety relief valve setting.

* * * * *

§ 151.50–32 [Amended]

29. In § 151.50–32, paragraph (h) is removed and reserved.

§ 151.50–35 [Removed]

30. Section 151.50–35 is removed.

Signed: September 12, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–28206 Filed 12–8–89; 8:45 am]

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December 11, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste Management System; Identification and Listing of Hazardous Waste CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH-FRL-3630-8; EPA/OSW-FR-89-019]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous one generic category of waste generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having carbon chain lengths ranging from one to five (EPA Hazardous Waste No. F025). EPA is also responding to comments on another generic category of waste (that was promulgated as an interim final rule on February 10, 1984) generated by the same process (EPA Hazardous Waste No. F024); the Agency is also finalizing this listing without substantive change, although the listing description has been clarified. In addition, the Agency is finalizing the addition of two toxicants to Appendix VIII of part 261. The effect of this regulation is that these wastes will be or will continue to be subject to regulation, respectively, as hazardous under 40 CFR parts 261–266, 268, 270, 271, and 124. This action, however, does not apply to wastes generated during the production of chlorinated aliphatic hydrocarbons that were previously listed as hazardous on May 19, 1980.

In addition, the Agency is also making final amendments to CERCLA regulations in 40 CFR part 302 that are related to today's final hazardous waste listing. In particular, EPA is making final the designation as hazardous substances under CERCLA all of the wastes made final in today's rule and the final reportable quantities that would be applicable to those wastes.

DATES: Effective Date: The listing of EPA Hazardous Waste No. F025 becomes effective on June 11, 1990; the amended listing for EPA Hazardous Waste No. F024 becomes effective June 11, 1990.

ADDRESSES: The RCRA docket is located at the following address, and is open from 9 to 4, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (Room 2427) (OS–305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment by calling (202) 475–9327 to review docket materials. Refer to "Docket number F–89–GCAF–FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page. Copies of the non-CBI version of the listing background document, Health and Environmental Effects Profiles (HEEPs), and not readily available references are available for viewing and copying only in the OSW docket. Copies of materials relevant to the CERCLA portions of this rulemaking are contained in Room 2427, U.S. EPA, 401 M St., SW., Washington, DC 20460. The docket is available for inspection from 9:00 a.m. to 4:00 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 or at (202) 382–3000. For technical information, contact Mr. John Austin, Listing Section, Office of Solid Waste (OS–333), at (202) 382–4789. For technical information on the CERCLA final rule, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210). Both are available at U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Outline

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001 (b) and (e)(2) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(2) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602(a).

II. Background

Pursuant to section 3001 of subtitle C of the Resource Conservation and Recovery Act (RCRA), this notice finalizes the listing of two generic categories of wastes generated during the manufacture of chlorinated aliphatic hydrocarbons as hazardous wastes. The following discussion provides a brief overview of regulatory actions affecting the wastes being finalized today.

On August 22, 1979 (44 FR 49402), the Agency proposed, among other things, to list as hazardous, by generic description, a number of wastes generated from the production of chlorinated aliphatic hydrocarbons. On May 19, 1980, EPA promulgated an interim final rule which listed as hazardous a number of wastes from the production of specific chemicals within the general class of chlorinated aliphatic hydrocarbons; however, the generic listing was not promulgated at that time (see 45 FR 33084).

Then, on February 10, 1984 (see 49 FR 5308–5315), the Agency, in two separate actions, proposed the listing of one generic category of waste and made an interim final listing of a second generic category of waste generated during the manufacture of chlorinated aliphatic hydrocarbons [1] by free radical catalyzed processes, which have carbon chain lengths ranging from one to and including five ("C1–C5").[2] The category

[1] "Chlorinated aliphatic hydrocarbons" (also known as "chlorinated aliphatics") refers to a class of organic compounds. "Hydrocarbons" are organic compounds (molecules) composed solely of the atoms hydrogen and carbon. "Aliphatic" designates that the chemical bond between cabon atoms is single, double, or triple covalent (not aromatic) bonds. (Cyclic aliphatic hydrocarbons are included in this class.) "Chlorinated" means that some of the hydrogen atoms in the "aliphatic hydrocarbon" have been chemically replaced with chlorine atoms at one or more different positions.

[2] The Agency has limited these listings to C1–C5 chlorinated aliphatic hydrocarbons for two reasons. First, C6–C10 chlorinated aliphatic hydrocarbons are not produced in significant quantity in the U.S. by the generic chemical reaction processes addressed by these listings. Second, and more importantly, the higher molecular weight chlorinated paraffin manufacturing processes typically do not produce significant amounts of organic residuals.

of wastes that became effective as interim final regulations, and thus has been in effect as EPA Hazardous Waste No. F024 since August 10, 1984, included distillation residues, heavy ends, tars, and reactor clean-out wastes (49 FR 5308–5312). Today's notice provides the Agency's response to a number of comments that were received on the interim final rule. Only minor changes to the F024 listing are being made in response to these comments.

The proposed listing included light ends, spent filter and filter aids, and desiccant wastes (49 FR 5313–5315). With the exception of light ends, today's notice finalizes the proposed listing of these residuals as EPA Hazardous Waste No. F025. The category of light ends has been narrowed in scope in this final rule to include only those light ends that have been condensed. These listings also do not include wastes from those processes that generate chlorinated aliphatic waste that EPA listed specifically in 1980—namely EPA Hazardous Waste Nos. K016, K018, K019, K020, K028, K029, K030, K095, and K096.

The basis for both of these actions was a determination by the Agency that the proposed and interim final wastestreams contained a wide range of potentially carcinogenic, mutagenic, teratogenic, or otherwise chronically or acutely toxic chlorinated and non-chlorinated organic compounds, which are listed below:

Table 1—Toxicants of Concern

Chloromethane
Dichloromethane
Trichloromethane
Carbon tetrachloride
Chloroethylene
1,1-Dichloroethane
1,2-Dichloroethane
trans-1,2-Dichloroethylene
1,1-Dichloroethylene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Pentachloroethane
Hexachloroethane
3-Chloropropene
Epichlorohydrin
Dichloropropane
Dichloropropene
2-Chloro-1,3-butadiene
Hexachloro-1,3-butadiene
Hexachlorocyclopentadiene
Benzene
Chlorobenzene
Dichlorobenzenes
1,2,4-Trichlorobenzene
Tetrachlorobenzene
Pentachlorobenzene
Hexachlorobenzene
Toluene
Naphthalene

One or more of these toxicants are typically present in each waste at significant concentrations, although each waste does not contain all of the individual toxic constituents of concern.

The Agency originally inferred the presence of these toxicants from knowledge of free radical reaction chemistry and from manufacturing process conditions. In conjunction with this theoretical predictive methodology, the Agency obtained representative samples and confirmed the presence of these contaminants through chemical analysis. These hazardous constituents are mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. (See the preambles to the interim final and proposed rules at 49 FR 5308 and 5313 for a more detailed explanation of our basis for listing these wastes as hazardous.)

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. These amendments had far-reaching ramifications for EPA's hazardous waste regulatory program. Section 3001(e)(2), which was one of the many provisions added by HSWA, directed EPA to make a decision on whether or not to list under subsection (b)(1) several wastes, including chlorinated aliphatics, as hazardous. By finalizing these two chlorinated aliphatics waste listings, the Agency is fulfilling its mandate under section 3001(e)(2) of RCRA.[3]

HSWA prohibits the land disposal of hazardous wastes. It also requires the Agency to set levels or methods of treatment that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that threats to human health and the environment are minimized. Wastes that meet the treatment standards are not prohibited and may be land disposed. A treatment standard is based on the performance of the best demonstrated available technologies (BDAT) to treat the waste. For a waste identified or listed after HSWA was enacted, the Agency has six months to determine specific treatment standards which the waste must achieve prior to land disposal. BDAT standards for waste F024 were promulgated on June 23, 1989. In the Land Disposal Restrictions for the Third Third of Scheduled Wastes Proposed Rule, the Agency is proposing BDAT standards for waste F025.

[3] Throughout the remainder of this notice, all references to the final listing of these two chlorinated aliphatics wastes mean the final listing of waste F024, which was promulgated as an interim final rule, and the final listing of the proposed waste F025.

III. Summary of the Final Regulation

This regulation finalizes the listing as hazardous the following wastes generated from the production of chlorinated aliphatic hydrocarbons by free radical catalyzed processes, having a carbon content ranging from one to and including five, with varying amounts and positions of chlorine substitution:

- F024—Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts of positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.)
- F025—Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.

The major commercial products produced by the free radical catalyzed chemical manufacturing processes of C1–C5 chlorinated aliphatic hydrocarbons (from which the listed residual wastes are generated) include but are not limited to the following products:

Table 2—Major Commercial Products

Carbon tetrachloride
1-Chlorobutane (*n*-Butyl chloride)
Chloroethane (Ethyl chloride)
Chloroform (Trichloromethane)
2-Chloro-1,3-butadiene (Chloroprene)
Chloromethane (Methyl chloride)
2-Chloro-2-methylpropane (*t*-Butyl chloride)
3-Chloro-2-methylpropene (Methallyl chloride)
3-Chloropropene (Allyl chloride)
Dichlorobutadiene
Dichlorobutenes
1,4-Dichlorobutyne
1,2-Dichloroethane (Ethylene dichloride)
Dichloromethane (Methylene dichloride)
1,2-Dichloropropane
1,3-Dichloropropene

Hexachlorocyclopentadiene
Tetrachloroethylene (Perchloroethylene)
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene (1,1,2-Trichloroethene)
1,2,3-Trichloropropane
1,2,3-Trichloropropene
Vinyl chloride (Chloroethene)
Vinylidene chloride (1,1-Dichloroethene)

EPA has evaluated the wastes generated from the production of these products against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), and has determined that they typically contain high concentrations of the constituents of concern listed in Table 1, that the toxicants are mobile and persistent in the environment, that these wastes have been mismanaged in the past, and that many of the toxicants in the wastes are regulated by other EPA regulations, as well as by regulations of other government agencies. The Agency, therefore, believes that these wastes are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, and thus are hazardous wastes.

Additional information on the hazards of these wastes and the toxicant constituents of these wastes may be found in the listing background document and the Health and Environmental Effects Profiles, available as described in the "ADDRESSES" section.

With respect to the proposed listing of light ends, the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however, under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases.

The Agency also added two componunds, 2-chloro-1,3-butadiene (chloroprene) and 3-chloropropene (allyl chloride), to Appendix VIII of Part 261, the list of hazardous constituents identified by the Agency as exhibiting toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. (See 49 FR 5311, February 10, 1984.)

IV. Response to Comments

EPA received comments on all aspects of the interim final and proposed regulations. The comments were submitted by generators of these wastes, an association which represents such generators, and public interest groups. The Agency has evaluated these comments carefully, and has modified the regulation, as well as the supporting documentation, as appropriate. This notice finalizes both the interim final and proposed regulations of February 10, 1984. This section presents some of the major comments as well as EPA's response to many of the comments received on both of these actions. In addition to material in this preamble, the Agency's response to these comments is also set forth in the revised listing background document available in the public docket for this rulemaking at EPA Headquarters—see "ADDRESSES" section.

A. Clarification of Scope of the Listing

A number of commenters objected to the Agency listing these wastes as a generic class. In particular, the following comments were made:

1. Before challenging the Agency's substantive decisions, several commenters argued that the Agency lacks the legal authority to list wastes generically, citing the House Committee Report which states "* * * the Administrator shall promulgate regulations identifying and *specifically listing* those hazardous wastes subject to this title." (See H.R. Rep. No. 94–1491, 94th Cong., 2nd Sess. at 56.) One commenter, however, supported such an approach, arguing that a waste-by-waste listing would be very inefficient and probably incomplete.

EPA has no doubt as to the legality of its authority to list wastes generically, and has already responded to such challenges (see preamble to part 261, 45 FR 33114, May 19, 1980).

2. A number of commenters expressed concern that a generic listing would create an inequitable situation for those persons who generate a waste that would be included in the generic class, but which may not be hazardous.

In reviewing the available data, the Agency found in all instances that wastes that would be included in the listing description contained significant levels of one or more of the hazardous constituents of concern that would cause the Agency to consider the waste hazardous. In fact, the Agency carefully reviewed the various generic production processes to ensure that no waste was mistakenly included in the listing. As discussed in the listing background document, the concentrations of the toxicants of concern were many orders of magnitude above the levels associated with human health concerns. In addition, the solubilities of the hazardous constituents of concern were also many orders of magnitude above the same levels. Thus, only a small fraction of the hazardous constituents present in the wastes need migrate and reach environmental receptors to pose a substantial hazard to human health and the environment.

The Agency used these data in combination with a methodology based on free radical chemical mechanisms to predict that significant concentrations of toxicants would be present in all of the wastes from these generic processes. In no instance did the Agency receive any comment refuting, or even questioning, the validity of this predictive methodology; nor was any analytical data provided by the commenters that would refute the listing. We, therefore, disagree with the commenters. It should be noted, however, that if a person does generate or manage a waste that contains insignificant levels of the various hazardous constituents (*i.e.*, that person believes that the waste is nonhazardous), then the person may petition the Agency to delist this waste on a case-by-case basis. See 40 CFR 260.20 and 260.22.

3. Several commenters argued that an efficient delisting procedure was not available for the exclusion of wastes in the generic class which do not have the hazardous properties for which they were listed. They commented further that, even if an efficient procedure were available, no guidance was available as to the criteria, such as concentration levels of hazardous constituents, used to determine if a waste was no longer hazardous.

As discussed above, the Agency does not believe that the wastes listed in today's rule would, without treatment, qualify as nonhazardous. Notwithstanding, the Agency acknowledges that there were some historical problems with the delisting program. Since 1984, these problems have mostly been resolved as the staff has gained experience with the program and guidance has been developed (see Petitions to Delist Hazardous Wastes: A Guidance Manual, April 1985, EPA/530–SW–85–003) to assist the regulated community in preparing delisting petitions.

4. Several commenters objected to including in the listing description for EPA Hazardous Waste No. F024 the phrase "including but not limited to." The commenters argued that the phrase is ambiguous, overly broad, and in conflict with the language from H.R. Rep. No. 94–1491, which states that the Agency should promulgate regulations

identifying and specifically listing wastes. In addition, the commenters claimed that no hazard criteria can be used in evaluating the waste if the waste is not even identified.

The Agency disagrees with the commenters. The listing is sufficiently specific. The listing description clearly states that all wastes from the subject process (except those that are specifically excluded) are covered by the listing; the process is identified unambiguously in both the Federal Register notice and in the listing background document (*i.e.*, the support documentation provides a detailed description that explains the sources in the process from which the wastes are generated). Likewise, we have carefully explained our basis for defining these wastes as hazardous—namely, that these wastes are hazardous after considering the concentration of the toxicants in the waste, their propensity to migrate and persist, as well as other relevant criteria in § 261.11(a)(3). As discussed in the February 10, 1984 rule, many of these toxicants also are bioaccumulative, increasing the risk of exposure to higher levels of toxicants. The Agency has evaluated a large number of waste streams that contacted the raw materials, intermediates, or product streams. These wastes contain significant amounts of the hazardous constituents of concern. No commenters provided any data refuting this information. Also, as is discussed more fully in the background document, any wastes generated from new or modified processes not discussed specifically in the background document are expected to generate wastes similar to F024. If wastes generated by new or modified processes are significantly different, then a generator may always submit a delisting petition to the delisting program. The Agency, therefore, perceives no general difficulties with including the phrase "including but not limited to" in the listing description.

5. One commenter believed that listing all spent filters, filter aids, and desiccants unduly penalized manufacturers by requiring RCRA permits when they decontaminate these materials and return them to the process. Another commenter argued that wastes (*i.e.*, spent desiccants, filters, or filter aids) which do not come into contact with or derive from the product line (but which are derived from the production process) should not be included in the generic listings.

With regard to the first point, although the Agency believes it important to encourage the recycling of hazardous waste, the Agency is guided by the principle in RCRA that the paramount and overriding statutory objective of RCRA is protection of human health and the environment. The statutory policy of encouraging recycling is secondary and must give way if it is in conflict with the principal objective. See 50 FR 618, January 4, 1985. In addition, where Congress wished to further the recycling objective it said so explicitly. See RCRA section 3014 (recycled oil). Indeed, there have been a number of instances of environmental damage (*i.e.*, groundwater contamination) caused by improper storage of hazardous wastes awaiting reclamation. See Appendix A at 50 FR 658 for a summary of damage incidents resulting from the recycling of hazardous wastes. It should be noted, however, that once the filters, desiccants, *etc.*, are reclaimed and returned to the process as usable products, these filters, desiccants, *etc.*, are no longer considered wastes, and so are not subject to the RCRA subtitle C regulations. See 40 CFR 261.3(c)(2); see also 50 FR 634, January 4, 1985. Permits are required for storage prior to reclamation. See 40 CFR 261.6(c).

As to the other commenter's point, the Agency agrees that if a waste generated from the generic process does not come into contact with or derive from the product line (or any raw materials or wastes), the waste should not be included in the listing description for waste F025. However, the Agency is not aware nor was any information provided by the commenter of how a waste, which is derived from the production process, would not come into contact with the raw materials, intermediates, or wastes.

6. A number of commenters agreed with the Agency that wastewaters derived from these processes should not be included in the listing. (One commenter, however, argued that both wastewaters and the wastewater treatment sludges should be listed; see next comment for details.) The commenters believe that the wastewater exclusion would not function as such, however, since any *de minimis* losses that leak or spill from the process would be washed into the wastewater treatment system and would cause the wastewaters to be hazardous via the mixture rule. They, therefore, recommend that the listing be modified to specifically exclude those *de minimis* losses that become mixed with the wastewaters.

The Agency agrees with the commenters that wastewaters and wastewater treatment sludges should not be listed (see 49 FR 5308, February 10, 1984, for our basis on this determination); however, if waste F024 and F025 is leaked or spilled and then washed into the wastewater treatment system, the Agency believes that the wastewater should be hazardous by the mixture rule. The Agency explained in a previous rulemaking its reasons for excluding and including within the hazardous waste system mixtures of certain listed wastes and solid wastes such as wastewaters (see 46 FR 56582, November 17, 1981). In particular, in that rule, the Agency exempted from the mixture rule certain wastewater mixtures where the listed hazardous wastes will be present in such low concentrations that they do not pose a substantial hazard to human health or the environment and often will be treated in the plant's chemical, biological, or physical wastewater treatment system.

The Agency believes that only the spent solvents (wastes F001–F005) listed in § 261.31, the commercial chemical products listed in § 261.33, and wastewaters resulting from laboratory operations (where the wastewater coming from the laboratory is a small percentage of flow into the wastewater treatment system) should be covered by the wastewater mixture exemption because they are seldom principal wastestreams and often are discharged in small quantities into wastewaters as a practical way of managing them. On the other hand, the Agency believes that the other hazardous wastes listed in § 261.31 (including the F024 and F025 wastes being listed in this rulemaking) and those listed in § 261.32 typically are generated in large volumes relative to the non-hazardous wastewaters generated at the same plant, and, if mixed with the wastewater, often constitute a significant portion of the wastewater mixture, thereby causing the mixture to pose a substantial hazard to human health or the environment.[4]

Moreover, as the Agency noted in exempting mixtures of small quantities of spent solvents and wastewater from the mixture rule, it is not always possible to collect and segregate spent solvents. For example, small spills or incidental losses from various degreasing or maintenance operations around the plant are often difficult to prevent or control, even where careful

[4] Several of the hazardous constituents in wastes F024 and F025 are also listed spent solvents. However, process wastes (such as F024 and F025) where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the F001–F005 spent solvent listings (see 50 FR 53318, December 31, 1985). Therefore, the existing wastewater mixture exemption does not apply to these listed wastes.

operating procedures are followed. Such small quantities of spent solvents sometimes drain or are washed into wastewater sewer systems; in certain circumstances, it is also reasonable to discharge these small quantities into the nearest sewer connected to the wastewater treatment system. 46 FR at 56584. In contrast, EPA believes that in a well-designed and managed manufacturing plant for chlorinated aliphatic hydrocarbons, it is not unreasonably difficult to prevent small amounts of wastes from leaking or spilling into the wastewater system. Unlike the widespread prevalence of spent solvents throughout the plant, F024 and F025 wastes are principal waste streams and will be removed from discrete process units and confined and managed as hazardous wastes when this rule is finalized. For all these reasons, EPA believes that it would be unwise and unnecessary to create an additional exemption to the mixture rule for mixtures of F024 and F025 wastes and wastewater.

The regulated community may petition for an exclusion of any hazardous waste mixture on a generator- or waste-specific basis (which would require representative data from the industry). At this time, the Agency does not have sufficient information to make such a generic exclusion with the confidence that public health and the environment would still be protected; therefore, we are not modifying the rules. Another approach that the Agency is considering to address this situation is to establish *de minimis* regulatory levels for hazardous constituents in listed hazardous waste, including hazardous waste mixtures and residues.

7. One commenter stated that the Agency had sufficient data to list wastewater and wastewater treatment sludges at the time of the proposed and interim final rules. Such evidence was said to include ten damage cases from wastewater treatment lagoons described in the listing background document.

Although many incidents of contamination of ground water by chlorinated organics have been documented as a result of storing or treating wastewaters in unlined surface impoundments, the Agency has been able to document only two incidents which could be tied definitively to the *manufacture* of C1–C5 chlorinated aliphatic hydrocarbons. The incidents cited by the commenter provide evidence of the migratory potential of the hazardous constituents of concern in aqueous waste. However, the Agency does not have sufficient data at this time to characterize wastewater streams, which may be highly variable in regard to constituent concentrations. If the Agency obtains more data, it will be able to fully evaluate wastewaters and wastewater treatment sludges from these processes to determine if they should be listed. Notwithstanding the possibility of any such future determination, EPA believes that today's action satisfies the requirement in RCRA section 3001(e)(2) to make a determination of whether or not to list chlorinated aliphatics. Any future listings would be pursuant to EPA's general authority to list hazardous wastes under section 3001(b).

8. One commenter believed that the listing of light ends would be redundant, since most of the constituents of these wastes are currently regulated under § 261.33(f).

The commenter is apparently confused. The listing of commercial chemical products under § 261.33(f) does not apply to process waste streams. Rather, these listings cover unused commercial chemical products, which become wastes when disposed or are intended for disposal. Commercial chemical products consist of the pure grade of the chemical, any technical grades of the chemical, and all formulations in which the chemical is the sole active ingredient in a formulated product. Listing under § 261.31 covers wastes that are generated during certain generic production processes, such as the manufacture of chlorinated aliphatic hydrocarbons. Thus, the listing of light ends in waste F025 would not be redundant with already listed wastes.

B. Applicability of Rules to Wastes That are Recycled

Several commenters pointed out that several of the wastes may be sold as raw materials and, therefore, are not wastes. By listing them, they believed that there would be an unwarranted burden imposed on the sale of these residuals, even if necessary permitting and delisting procedures were complied with, thus encouraging customers to buy other feedstocks. Several other commenters requested that the Agency refrain from listing these wastes until it makes final its recycle/reuse rules.

The Agency agrees with the commenters that in many cases light ends from the manufacture of C1–C5 chlorinated aliphatic hydrocarbons are products and are sold as such. However, this is not always the case. If, in fact, light ends are sold as products, then the January 4, 1985 definition of solid waste regulations deal with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. See 50 FR 614. Among other things, the rule states that materials used or reused as an ingredient in an industrial process to make new products (provided the materials are not being reclaimed), or used or reused as effective substitutes for commercial products (again without being reclaimed), are not solid wastes. (See 40 CFR 261.2(e), 50 FR 664, and also preamble discussion at 50 FR 637.) If these residues (regardless of whether they are listed) are recycled in this manner, they are not considered solid wastes and therefore by definition are not hazardous wastes. See 40 CFR 261.3. However, these materials may still be solid and hazardous wastes if: (1) They are used/reused in a manner constituting disposal or used to produce products that are applied to the land; (2) they are burned for energy recovery or used to produce a fuel; (3) they are reclaimed; or (4) they are accumulated speculatively. See 40 CFR 261.2(e). (Since the recycle/reuse rules have already been promulgated, the second comment is moot.)

C. Proposal to List Condensable Light Ends

Several commenters objected strongly to the Agency's proposal to list light ends which are in the gaseous state but condensable by currently feasible technology to liquids at ambient temperature and pressure. The following arguments were offered.

Several commenters stated that the Agency does not have authority under RCRA to regulate gaseous process emissions, since these are not solid wastes (*i.e.*, they are not "contained gaseous material") as stated in the definition of solid waste. See RCRA section 1004(27). One commenter, however, supported the Agency by saying the proposal to regulate condensable light ends does not reflect in any way upon previous Agency policy applicable to contained gaseous materials, since these condensable light ends are not gaseous materials in the first place. Some commenters expressed the opinion that circumvention of regulation under RCRA by heating wastes to the gaseous state could be prevented by current permitting procedures.

Other commenters claimed that the fact that the Agency had previously listed light ends which were generated in the gaseous state did not empower the Agency to take similar action at a later date. One commenter also stated that the reason the phthalic anhydride listing of wastes K023 and K093 was not

questioned in 1980 was because, at that time, it was assumed that the listing only applied to the light ends in the condensed state. One commenter further argued that the phthalic anhydride light ends listing was not analogous, since the phthalic anhydride light ends contained maleic anhydride and phthalic anhydride, which was emitted from the process as particulates.

In addition, commenters objected to regulation under RCRA of gaseous emissions for other reasons, including that permitting would have a significant economic impact; that there currently are no standards for flares (and subsequently, permitting would be difficult); that regulation of fugitive emissions of gaseous liquids from valves and pipes might follow regulation of gaseous light ends under RCRA; that condensation of light ends to ambient temperature could cause equipment corrosion; and that the Agency had not adequately characterized these gaseous emissions.

In its proposal, the Agency explained that it believed that the exclusion from RCRA of gaseous materials that are not contained applied only to "true gases"—namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our concern was that a plant could evade regulation by designing a process to keep the process emissions in a gaseous state. See 49 FR 5314, February 10, 1984. Such a result could create human health and environmental concerns. For example, in the Bhopal incident, a volatile liquid (methyl isocyanate) escaped confinement from a storage tank in a situation analogous to the storage of condensed light ends.

Upon reconsideration of this issue (with the benefit of the comments received on the proposed rulemaking), EPA now believes our authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases (*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes).[5]

EPA, therefore, has decided not to regulate these uncondensed light ends. In the case of chlorinated aliphatic hydrocarbon manufacture, the Agency knows that manufacturers typically employ condensation devices in conjunction with distillation equipment, since the condensable fraction of these emissions is either a valuable product or recyclable feedstock material. If the light ends are condensed and reused to make new products or effective substitutes for commercial products, they will not be considered solid or hazardous wastes, as long as they have not been reclaimed and they do not meet the criteria specified in § 261.2(e). See 50 FR 637. If every disposed (prior to any such reuse), however, these condensed light ends would be considered a solid waste and subject to today's listing. Consequently, our decision should not present an environmental concern.

Although we agree with the commenter that heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste, the Agency believes that it cannot use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of (for example) installing some internal heating mechanism that generates the same liquid waste in the gaseous state. RCRA jurisdiction does not provide this kind of control over manufacturing processes. Of course, thermal threatment *after* a material becomes a hazardous waste is fully regulated under RCRA.

The Agency also agrees with the commenters that citing the phthalic anhydride light ends listing raises substantial questions with respect to establishing precedents. We have, accordingly, deleted references to it in the listing description and preamble.

D. Evaluation of the Hazardous Properties of the Wastes

Other comments expressed specific concerns with the Agency's evaluation of the hazardous properties of the wastes, either through its toxicological evaluations of individual hazardous constituents, its projection of concentration levels of constituents in the wastes, or its analysis of the ability of the constituents to migrate from the wastes.

1. Two commenters stated that some of the conclusions reached by the Agency do not accurately reflect the present state of knowledge of the oncogenic properties of the constituents in these wastes. They commented that the Agency did not attempt to clarify the level of risk (of carcinogens) or to provide substantiation of its conclusions that the Carcinogen Assessment Group (CAG) assessment documents on which the Agency relied are consistent with "current levels of knowledge and existing data"; they also stated that the Agency should have used weight of evidence characterizations in its assessment of the potential hazards of these compounds. In particular, the commenters asserted that the Agency should not have judged constituents to be "potential human carcinogens" when the evidence for carcinogenicity for several of these chemicals would fall into "Group 3: chemicals * * * which * * * cannot be classified as to their carcinogenicity to humans."

The agency's judgment on the potential carcinogenic and toxic effects resulting from continued low-level exposure to the constituents of concern are outlined in the Health and Environmental Effects Profiles for each constituent of concern. The major health concerns are summarized in the listing background document. The commenter gave no specific criticism that EPA's facts do not "reflect the present state of knowledge," (other than that noted above) and did not provide any additional data or other information to challenge the basis for EPA's decision to list. We are, therefore, unable to respond to this criticism. (It should be noted that the Agency has reviewed more recent studies addressing these constituents, and finds that this information corroborates the Agency's original decision to list. This information has been summarized and placed in the docket.)

With respect to the "weight-of-evidence" argument, the Agency promulgated guidelines for carcinogenic risk (see 51 FR 32656, September 24, 1986) which incorporates an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)
Group B—Probable human carcinogen
Group B_1—Limited evidence of carcinogenicity in humans
Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)

[5] EPA's previously issued guidance concerning fume incinerators (contained in the preamble to the incineration regulations) remains in effect. See 47 FR 27530, June 24, 1982. Fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste according to the definition set forth in § 261.2.

Group E—Evidence of non-carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies).

The Agency regards agents classified in Group A or B as suitable for quantitative risk assessment. The suitability of Group C agents for quantitative risk assessment requires a case-by-case review because some Group C agents do not have a data base of sufficient quality or quantity to perform a quantitative carcinogenicity risk assessment. The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Application of these guidelines shows that benzene and vinyl chloride are considered "carcinogenic to humans", the weight of evidence for carcinogenicity falling into class A. For the following hazardous constituents of concern, the weight of evidence for carcinogenicity is considered to fall into class B2. Thus, these compounds are considered to be probably carcinogenic to humans:

Carbon tetrachloride
1,2-Dichloroethane (Ethylene dichloride)
Dichloromethane (Methylene chloride)
Epichlorohydrin (1-Chloro-2, 3-epoxypropane)
Hexachlorobenzene
alpha-Hexachlorocyclohexane
gamma-Hexachlorocyclohexane
Tetrachloroethene (Perchloroethylene)
Trichloroethene (Trichloroethylene)
Trichloromethane (Chloroform)

The following constituents of concern are considered to be possible human carcinogens (class C):

1,1-Dichloroethene (Vinylidene chloride)
Hexachloro-1,3-butadiene
beta-Hexachlorocyclohexane
delta-Hexachlorocyclohexane
Hexachloroethane
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane

The listing background document has been modified to indicate the carcinogen class for each constituent of concern.

2. Several commenters argued that the discussion in the listing background document was not sufficiently specific to determine the routes of exposure by which the hazardous constituents exert their toxic effects. They further argued that one cannot conclude that health effects from ingestion and inhalation are the same.

The Agency agrees that the assessment of the risk to human health resulting from improper disposal of wastes ideally should take into account the various routes of exposure. Since most of the toxicants of concern in these wastes have relatively high vapor pressures, they are likely to be emitted to the air from most waste management practices. In addition, the solubilities and environmental persistence of these compounds are sufficiently high to cause contamination of ground and surface water (see the damage incidents described in the listing background document).

Finally, since risks based on exposure from ingestion fully support the listing of these wastes as hazardous, it would be redundant and therefore not necessary to consider the hazard posed by other routes of exposure, such as inhalation.

3. Two commenters did not agree with the Agency's comparing concentrations of hazardous constituents in wastes as "orders of magnitude greater than" the AWQC. One commenter gave the example of a tar waste that is rock hard when cool, and suggested that the Agency use the aqueous solubility of hazardous constituents as a criteria for listing, and not simply a comparison of the total concentration of a constituent to a comparison of the AWQC.

The Agency recognizes the importance of matrix effects on the extent to which hazardous constituents can be expected to leach from a waste. Accordingly, the Agency has developed a leaching test (the Toxicity Characteristics Leaching Procedure, or TCLP), which can be used as an indicator of the leachability of certain constituents from wastes. As part of the proposed Toxicity Characteristics (see June 13, 1986, 51 FR 21648), the leaching test would be used to identify wastes that clearly pose hazards due to their potential to leach specific hazardous constituents at levels that could harm human health through contamination of ground water. While several of the hazardous constituents for which waste F024 and F025 are being listed are among those that are proposed to be included in the Toxicity Characteristics, many are not. Therefore, a more qualitative assessment of hazard was used for this listing.[6]

In this assessment, we first assume that the potential for hazardous constituents to migrate from an organic waste is generally correlated to the total concentration of the constituents in that wastes (*i.e.*, the higher concentration of the constituents in the waste, the higher the concentration of the constituents is likely to be in the leachate from the waste). Second, we also consider the solubility of the contaminants in the waste. As indicated in the proposal and in the interim final rule, the solubilities of the constituents of concern are many orders of magnitude greater than the AWQC (a suggestion made by the commenter). Finally, we evaluate empirical evidence demonstrating that significant environmental exposures have resulted from leaching of hazardous constituents from similar wastes. This has been seen in numerous damage incidents from wastes containing the chlorinated toxicants of concern. In addition, a physically similar coal tar used for lining and sealing tanks for drinking water (a cohesive tarry substance) was found to leach substantial concentrations of relatively water insoluble polynuclear aromatic hydrocarbons (PAHs), such as benzo[a]pyrene, into water.

These facts demonstrate that the hazardous constituents at issue here are capable of migrating even from a fairly stable waste matrix. We believe, therefore, that our assessment is accurate with respect to the potential for hazardous constituents to leach from all of the wastes described by this listing.

4. Several commenters questioned our conclusions regarding the toxicities of specific hazardous constituents. The Agency has carefully reviewed the comments but still believes those toxicants are of concern. See the listing background document for specific responses to these comments.

Since the public comments on the proposed and interim final regulations have not refuted or seriously called into question the Agency's initial basis for listing wastes generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having carbon chain lengths varying from one to and including five, we are today finalizing the listing of F025 as well as F024 in 40 CFR 261.31 (only minor changes are being made to the listing of F024).

V. Relation to Other Regulations

A. Proposed Toxicity Characteristic

As one of the mandates of HSWA, the Agency proposed to expand the Toxicity Characteristic (TC) by including additional toxic organic chemicals. Under the June 13, 1986 proposal, the hazardous waste listings in subpart D of 40 CFR part 261 would not be affected. All the listings would remain in effect, including those listings that were based on the presence of TC constituents. It is

[6] It should be noted that the hazardous waste characteristics contained in subpart C of part 261 (*e.g.*, the Toxicity Characteristics) are "generic" in that they apply to all solid wastes and do not reflect consideration of unique aspects of certain wastestreams. Thus, the consideration of these unique aspects (volume of waste generated, damage incidents, etc.) may lead to the conclusion that a waste is hazardous and should be listed in subpart D of part 261, even if it does not exhibit any of the hazardous waste characteristics.

EPA's intention that the hazardous waste listings would continue to complement the TC. Once promulgated, the TC might capture wastes generated by the chlorinated aliphatics industry that are not covered by wastes F024 or F025. Such wastes could include wastewaters and wastewater treatment sludges.

B. Land Disposal Restrictions

HSWA mandated land disposal restrictions for wastes listed prior to the enactment of HSWA under a specific schedule (see 51 FR 19300, May 28, 1986). If the Agency failed to prohibit the wastes within the period specified, the wastes were restricted from land disposal. Waste F024, which was interim final effective August 10, 1984, was included in the second third to be evaluated for land disposal restrictions. The final rule promulgating treatment standards for the second thirds wastes included treatment standards for waste F024 (see 54 FR 26594, June 23, 1989).

Although the Agency listed Hazardous Waste No. F024 under an interim final rule prior to the enactment of HSWA, the Agency nonetheless took comment on that action. Today's action responds to comments received on that interim final rulemaking and finalizes our determination under HSWA 3001(e) to list Hazardous Waste No. F024. Today's action on F024, which does not alter the listing or its substances, but only clarifies its description, does not alter the Agency's June 23, 1989 determination in regard to the land disposal restriction.

Furthermore, HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). In the Land Disposal Restrictions for the Third Third of Scheduled Wastes Proposed Rule, the Agency is proposing a treatment standard for Hazardous Waste No. F025.

VI. Test Methods for Compounds Added to Appendices VII and VIII

Most of the substances designated in this final rule as hazardous constituents are currently listed in table 1 of appendix III of 40 CFR part 261, which designates the test methods that can be used when characterizing wastes for the purpose of delisting.

On October 1, 1984 (49 FR 38786), the Agency proposed several changes to the RCRA hazardous wastes regulations, including the addition of new methods to SW-846. After evaluating the comments, the Agency decided not to promulgate the October 1, 1984 proposal. Instead, the Agency revised SW-846 to incorporate many of the suggestions made in the comments, which were made available in the Third Edition of SW-846 (40 FR 8072, March 16, 1987). On January 23, 1989 (54 FR 3212), the Agency proposed, among other things, new and revised methods in the Third Edition of SW-846, the first update package to the Third Edition, and expansion of table 1 of Appendix III of 40 CFR part 261. Once finalized, these methods may be used to determine whether a sample contains a given Appendix VII or VIII toxic constituent. However, until the Third Edition of SW-846 is made final, the Second Edition as amended by Updates I and II, and the 47 methods that were finalized September 29, 1989 (54 FR 40260), remain as the approved methods for meeting regulatory requirements under substitle C of RCRA.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, 3rd ed., September, 1986, as amended; available from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238, Document No.: 955-001-00000-1.

VII. Compounds Added to Appendix VIII

On February 10, 1984 (49 FR 5311), the Agency made interim final the addition of two compounds, 2-chloro-1,3-butadiene (chloroprene) and 3-chloropropene (allyl chloride), to Appendix VIII of part 261, the list of hazardous constituents identified by the Agency as exhibiting toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. These are two of the hazardous constituents for which wastes F024 and F025 are listed. No comments were received on this rule. Therefore, these two compounds will remain listed on Appendix VIII. However, in a notice of technical corrections to § 261.33 and Appendix VIII (53 FR 13382, April 22, 1988), the Agency inadvertently deleted allyl chloride from Appendix VIII. In today's action, EPA is making a technical correction to once again include allyl chloride in Appendix VIII.

VIII. CERCLA Designation and Reportable Quantities

All listed hazardous wastes, as well as any solid waste that meets one or more of the characteristics of a hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of CERCLA. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4, along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ immediately notify the National Response Center of the release (at (800) 424-8802 or in the Washington, DC metropolitan area at (202) 426-2675). In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance to the appropriate State emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance.

According to the "mixture rule" developed in connection with the Clean Water Act section 311 regulations and also used for notification under CERCLA and SARA (50 FR 13463, April 4, 1985), the release of mixtures must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known. When the concentrations of the individual constituents of a hazardous waste are known, the release of the hazardous waste would need to be reported to the NRC and to the appropriate LEPC and SERC when the RQ of any of the hazardous constituents is equaled or exceeded. RQs of different hazardous substances are not additive under the mixture rule (except for radionuclides, see 54 FR 22536, May 24, 1989), so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

On August 10, 1984, the effective date of the interim final rule, waste stream F024 became a CERCLA hazardous substance with a statutorily imposed one pound RQ. A one pound final adjusted RQ for waste stream F024 was promulgated on August 14, 1989 (54 FR 33426). As concerns F025, when today's rulemaking becomes effective, waste stream F025 will automatically become a CERCLA hazardous substance by virtue of its listing under RCRA. Under section 102(b) of CERCLA, a hazardous substance has a statutorily imposed RQ of one pound unless or until adjusted by regulation. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding waste F025 to 40 CFR 302.4, the codified list of CERCLA

hazardous substances, and listing its statutory RQ of one pound.

IX. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards and applies for and is granted authorization.

As noted above, both F024 and F025 wastes are listed today pursuant to section 3001(e)(2) of HSWA. Initially, F024 was listed pursuant to RCRA on an interim final basis. However, on November 8, 1984, Congress enacted HSWA, which amended RCRA. Among other things, these amendments require EPA to decide whether or not to list chlorinated aliphatics as hazardous wastes under HSWA (see section 3001(e)(2)). Therefore, the Agency is finalizing the F024 listing, as well as the F025 listing, under HSWA. This final rulemaking does not change the substance or the effective date (August 10, 1984) of the F024 interim final rule. Therefore, today's rule has been added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

Pursuant to HSWA, today's rule is immediately effective in both authorized and non-authorized States. EPA will implement the rule in authorized States until they modify their programs to reflect these Federal standards and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or fully equivalent to EPA's. The procedures and schedule for State program modifications are described in 40 CFR 271.21.

Section 271.21(e)(2) requires that States that have final RCRA authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications for the F025 wastes must be made by July 1, 1991, if only regulatory changes are necessary, or July 1, 1992, if statutory changes are necessary. These deadlines can be extended (see § 271.21(e)(3)).

States with final RCRA authorization were required to adopt the F024 listing in accordance with § 271.21(e)(2). Since today's final listing under the HSWA for the F024 wastes makes no substantive changes from the interim final listing, any State whose program changes for the F024 wastes have already been approved need not further revise its program or submit additional changes as a result of today's final listing under the HSWA. Rather, any such previously-approved State will be deemed approved for today's F024 listing under the HSWA.

X. Compliance Dates

A. Notification

Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96-452) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator. The Agency has decided to waive the RCRA section 3010 notification requirement for *only* those persons who generate, transport, treat, store, or dispose of these hazardous wastes that have previously notified EPA or an authorized State of hazardous waste activities and have received an identification number. The Agency believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number and therefore will not have to re-notify. However, any person who generates, transports, treats, stores, or disposes of these wastes that has *not* previously notified and received an identification number, that person must notify EPA or an authorized State no later than March 12, 1990, of these activities pursuant to section 3010 of RCRA. Notification instructions are set forth in 45 FR 12746, February 26, 1980. (Note that waste F024 has been subject to notification and permitting requirements since August 10, 1984, as discussed above in section IX of this preamble.)

B. Permitting

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate F024 and F025 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective, EPA will apply Federal regulations to these wastes and to their management in both unauthorized and authorized States which have not received authorization to regulate the wastes. Note that since many States have already been authorized for F024, this rule does not affect such existing State interim status and permit requirements for F024. Facilities managing F024 in such States should already have qualified for interim status and filed appropriate permitting documents.

Facilities that treat, store, or dispose of F024 and F025 but that have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, may be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, such facilities are required to submit a section 3010 notice if they have not previously filed notification pursuant to 40 CFR 270.70(a) by March 12, 1990, and must submit a Part permit application by June 11, 1990. Under section 3005(e)(3), by June 11, 1991, land disposal facilities qualifying for interim status under section 3005(e)(A)(ii) must also submit a Part B permit application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements. If

the facility fails to do so, interim status will terminate on that date.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of F024 and F025 and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended part A permit application by June 11, 1990, in accordance with § 270.72(a).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 is not able to treat, store, or dispose of F024 or F025 when the rule becomes effective on June 11, 1990, until a permit modification allowing such activity has occurred in accordance with § 270.42(g). Note that EPA has recently amended the permit modification procedures for newly listed or identified wastes. For more details on the permit modification procedures, see 53 FR 37912 *et seq.* (September 28, 1988).

XI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The total additional incurred cost for disposal of the wastes added by this rule, is less than $38,000, well under the $100 million constituting a major regulation. This insignificant cost is partly due to the fact that waste F024 has been regulated as hazardous since 1984 and therefore there should be no additional cost to comply with this rule. The cost for waste F025 results from minimal compliance requirements as these wastes are being handled as if they were hazardous (primarily due to their containing similar toxic constituents as F024) by most of the generators, who have interim status or part B permits. These generators will incur minimal increased costs for permit modifications, chemical analysis, and recordkeeping. This cost is much less than the estimated cost of $15 million stated in the proposed rule. This cost was based on conservative assumptions including that these wastes would be managed for the first time as hazardous.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

XIII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: November 29, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

§ 261.31 [Amended]

2. In § 261.31, revise the listing description for EPA hazardous waste No. F024 to read as follows:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
• • • • • • •		
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.).	(T)
• • • • • • •		

3. In § 261.31, add the following waste stream:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	•	•
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varyng amounts and positions of chlorine substitution.	(T)
•	•	•

Appendix VII—[Amended]

4. In part 261, appendix VII, add the entry for EPA Hazardous Waste No. F025 to read as follows:

EPA hazardous waste No.	Hazardous constituents for which listed
•	•
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; .Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzens; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
•	•

5. Add the following compound in alphabetical order to appendix VIII of part 261:

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Allyl chloride	1-Propane, 3-chloro	107-18-6	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

7. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
•	•	•	•
December 11, 1989	Listing Certain Hydrocarbons Produced by Free Radical Catalyzed Processes.	54 FR _____	June 11, 1990
•	•	•	•

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

8. The authority citation for part 302 continues to read as follows:

Authority: Secs. 101(1)(14) and 102(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

9. Section 302.4 is amended by adding the waste stream F025 to Table 302.4.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code*	RCRA waste No.	Category	Pounds (kg)
F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the producton of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and includng five, with varying amounts and positions of chlorine substitution.			*1	4	F025	X	**1(0.454)

* Indicates the statutory source as defined by 4 below.
[1] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
[2] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).
[3] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
[4] Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
[1]* Indicates that the 1-pound RQ is a CERCLA statutory RQ.
** The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then, the statutory RQ applies.

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federal register

Monday
December 11, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Phoenix Terminal Control Area and Revocation of Phoenix Airport Radar Service Area; Arizona; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

RIN 2120-AD00

Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Phoenix Sky Harbor International Airport, AZ. The TCA will consist of airspace from the surface or higher within a 25-mile radius of Phoenix Sky Harbor International Airport to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Phoenix Sky Harbor International Airport. Phoenix Sky Harbor International Airport is currently served by an Airport Radar Service Area (ARSA), which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

Phoenix Sky Harbor Airport qualifies for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 26 TCA's. The FAA is proposing to take action to modify or implement the application of these proven safety techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussion with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted here has been developed through substantial public participation. Initially, informal airspace meetings were held on June 30 and July 28, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Phoenix TCA. In addition, the Arizona Airspace Utilization Committee (AAUC) appointed a special task group to design a TCA to meet the needs of the flying community while providing the greatest safety. Technical assistance and support were supplied by Phoenix Terminal Radar Approach Control (TRACON) personnel. After those initial meetings and after extensive coordination with the AAUC task group, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on June 2, 1989 (54 FR 23922). Comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received 150 comments pertaining to the TCA proposal. The FAA has considered these comments and amended the final TCA design as contained in this rule. The FAA believes that the final TCA design contained herein promotes the safe and efficient use of airspace while satisfying ATC requirements.

Some comments received were not relevant to this rulemaking action and, therefore, will not be discussed. Those subject areas included controller staffing, pilot education, waivers and rules enforcement.

A significant number of standardized form letters were received that had been distributed to individuals to sign and mail in for comments. These letters expressed opposition to the proposed TCA design citing three reasons: The lack of a very high frequency omni-directional radio range (VOR) on the field at Phoenix Sky Harbor International Airport; a 25-nautical-mile circular extension from the primary airport; and the lack of a corridor for uncontrolled VFR traffic.

Persons sending these form letters, along with other comments received, requested that the FAA install a VOR on the field at Phoenix Sky Harbor International Airport to identify the TCA outer boundaries. They suggested that identifying the outer boundaries using the instrument landing system (ILS) localizer will create an unsafe situation for aircraft executing an approach into Phoenix Sky Harbor International Airport because of saturation of the localizer.

The FAA determined that a TCA can be established at the Phoenix Sky Harbor International Airport without any derogatory effect on safety as demonstrated at six established TCA's that do not utilize a VOR to describe the boundaries. The Phoenix TCA outer boundaries are described utilizing Distance Measuring Equipment (DME) from the Runway 8R ILS localizer antenna. A localizer continuously

broadcasts signals; therefore, is not subject to saturation. The DME associated with the localizer responds to interrogations from an aircraft containing DME equipment; however, it would take approximately 100 aircraft simultaneously engaging the DME facility before saturation would become a factor. The capacities of DME equipment are the same whether associated with a localizer or a VOR.

Another objection mentioned in both the form letters and other comments received was an extension of the lateral limits of the TCA from 20 to 25 miles from the primary airport. The lateral limits of the Phoenix TCA are extended to 25 miles in order to contain large turbine engine-powered aircraft operating to and from the primary airport. The TCA design takes into consideration the climb characteristics of all aircraft to allow them to exit through the top of the TCA and operate above the designated floors. The 20- to 25-mile area is divided into four sections that are needed to contain aircraft landing and departing the primary airport. The altitudes extend from 8,000 feet to 10,000 feet, except in the western portion which extends from 6,000 feet to 10,000 feet, allowing nonparticipating aircraft sufficient airspace to operate beneath the TCA floor.

Some commenters believe that the Mode C veil is sufficient reason to delete the 20- to 25-mile area of the TCA. The FAA firmly believes that this TCA design will provide the safest environment for air traffic in the Phoenix area, for the reasons stated above, and because air traffic controllers will not be in direct communication with these aircraft. Nor will the controllers have altitude information on all aircraft such as gliders.

Several commenters support an uncontrolled VFR corridor. The FAA has included in the design the Biltmore VFR transition route, which extends along Interstate 10 and north over Phoenix Sky Harbor International Airport. The transition route is within TCA airspace and all TCA equipment and operating requirements will apply to aircraft using the route. Since the Biltmore transition route crosses above the primary airport, the FAA believes that radio contact with all aircraft in the transition route will provide the safest environment for both IFR and VFR aircraft. The FAA is confident that control personnel will strive to provide service to all aircraft desiring entry in the Biltmore transition route. Procedures have been implemented to record all denials and delays. An analysis will be compiled within one year after the effective date of the TCA. If the analysis reveals that adequate service is not being provided to aircraft requesting the Biltmore route, the FAA will consider alternative methods. Charts depicting the Biltmore transition route, as well as other VFR flyways, will be distributed throughout the Western-Pacific Region and will appear on the Phoenix VFR terminal area chart in future publications.

The Department of the Air Force requested a realignment of the northwest boundary along the Aqua Fria River. The Agua Fria riverbed is the only corridor through which aircraft departing and arriving Luke Air Force Base (AFB) from the north can transit without flying directly over highly populated areas, namely Sun City and Sun City West. The FAA considered all aspects of this request and deleted approximately 6 miles of TCA airspace from the northwest boundary. This action will also decrease the mix of military aircraft with other aircraft circumnavigating the TCA and operating in and around the Glendale Municipal Airport.

The City of Glendale wrote requesting the TCA floor be raised over the Glendale Municipal Airport to prevent any conflicting airspace between the TCA and the airport traffic area (ATA). The FAA altered the boundary over the Glendale Municipal Airport as described above and also deleted Glendale Avenue boundary and extended the Camelback Road boundary. This action will raise the TCA floor over the Glendale Municipal Airport to 4,000 feet MSL.

The AAUC wrote expressing appreciation that the FAA adopted their design. However, during post-NPRM AAUC meetings, the committee decided to urge the FAA to reexamine three concerns before issuing a final rule: Locating a VOR on the field at Phoenix Sky Harbor International Airport; creating a VFR transition route that does not require a clearance from ATC; and deleting the 20- to 25-mile area north and south of the TCA. The three concerns cited by the AAUC were considered and discussed above.

The Air Traffic Control Association wrote, objecting to the use of streets to delineate boundaries and preferred a more generic TCA design. Streets may be difficult to identify; therefore, the potential exists for pilots to become confused.

Due to the terrain and the specific type of operations around the Phoenix area, a generic TCA design was not feasible. Furthermore, in designing the Phoenix TCA, the FAA adopted the landmarks recommended by the AAUC. These are prominent roads and other features, and through aerial observation it was determined that they are easily identifiable.

The aviation director representing the City of Phoenix wrote requesting that the western boundary of Area B be realigned to coincide with El Mirage Road. This change was requested so that previous noise abatement agreements between the cities of Phoenix and Goodyear can be maintained.

The FAA believes that El Mirage Road is not a sufficiently prominent landmark; therefore, it would not be suitable to delineate a boundary. However, by letter of agreement, we will ensure that noise abatement objectives are accommodated.

Several commenters requested that the FAA rescind the Special Use Airspace of FAR part 93, subpart E (Luke Corridor) stating that it would no longer be needed with the establishment of the TCA.

FAR part 93, subpart E procedures were designed to segregate uncontrolled VFR aircraft operating along V-16 from military turbojet aircraft operating from/to Luke AFB. This procedure restricts uncontrolled VFR aircraft to altitudes at and below 2,000 feet MSL and at and above 5,500 feet MSL. With the implementation of the Phoenix TCA, it is now a requirement for most aircraft operating within 30 nautical miles of the primary airport to be equipped with a Mode C transponder. Revocation of subpart E (Luke Corridor), part 93—VOR Federal Airway No. 16, Phoenix, AZ, is being accomplished by a separate rulemaking action from the establishment of the Phoenix TCA. The subpart E procedure will be revoked concurrently with the establishment of the Phoenix TCA.

The Aircraft Owners and Pilots Association (AOPA) wrote requesting that the FAA install a very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) on the airport, establish a VFR special use airspace corridor, and delete the 20- to 25-mile arcs (between 8,000 to 10,000 feet MSL) before implementing the Phoenix TCA. Further, AOPA stated that the Phoenix TCA design suggests a general lack of appreciation for the airspace requirements and user needs. The AOPA noted that the TCA encroaches on certain ATA airspace (Glendale Municipal, Phoenix-Goodyear Municipal, Scottsdale Municipal, Falcon Field), and that the FAA failed to

rescind the Special Use Airspace of FAR part 93, subpart E (Luke Corridor).

Most of the AOPA's concerns have been addressed above. The FAA worked closely with the AAUC in designing the Phoenix TCA and considered all user's needs before developing the final design. Except for Glendale Municipal Airport, the upper altitude limits of the ATA's at the airports cited by AOPA have been delegated to Phoenix Terminal Radar Approach Control by letter of agreement.

The State of Montana's Department of Commerce, aeronautics division wrote requesting the FAA to incorporate the AOPA's suggestions in the final design of the TCA.

The airport director representing the City of Mesa and the Scottsdale Pilots and Aviation Association wrote commending the FAA for incorporating user groups and individual concerns in the Phoenix TCA design. However, they feel that the 20- to 25-mile arcs are not justified. Also, a "funneling" effect between southbound aircraft departing Falcon Field Airport and aircraft circumnavigating the TCA will be created unless either the Gilbert Road boundary or the Williams 1 MOA boundaries are realigned.

The FAA believes that a sufficient amount of airspace exists to accommodate aircraft wishing to circumnavigate the eastern edge of the TCA and VFR aircraft departing southbound.

The McDonnell Douglas Helicopter Company (MDHC) wrote with the following requests: Eliminate the 20- to 25-mile arc (8,000 to 10,000 feet MSL) by requiring air carriers to accept accelerated climb procedures or to allow them to exit through the TCA lateral boundaries; relocate the Salt River VOR to the Sky Harbor International Airport field; maintain a list of Biltmore transition route "turnaways" and reconsider a VFR corridor concept if this is a significant amount; negotiate a letter of agreement providing MDHC with a test area and issue a Mode "C" authorization for certain operations.

Most of MDHC's requests have been previously discussed. MDHC operations can be accommodated through a letter of agreement with the Phoenix TRACON. Also, authorization to deviate from the Mode C transponder rule are granted by the facility having ATC jurisdiction in the local area.

One commenter wrote requesting a "V" shaped TCA leading into the ends of the primary airport runways at a three degree angle forming a corridor approach/departure path.

The primary concern in any proposed TCA action is to provide the highest degree of safety while preserving the most efficient use of the available terminal airspace. While corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adequate and/or sufficient airspace required to effectively vector and sequence the vast number of aircraft served in major terminals today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

The Air Transport Association of American wrote in support of a TCA at the Phoenix Sky Harbor International Airport and concurred with the TCA design.

The Air Line Pilots Association (ALPA) wrote in support of establishment of a TCA at the Phoenix Sky Harbor International Airport, but opposed the TCA configuration. ALPA stated that while the use of landmarks such as streets to delineate boundaries accommodated local pilots, it leaves every other pilot in a quandary. ALPA believes there is no substitute for a NAVAID on the airport in defining the TCA. Also, it stated that the lateral extention of 25 miles will not ensure that all aircraft departing will be contained in the TCA during hot weather.

The lateral limits of TCA's are normally described by geographic coordinates or other appropriate references that are easily discernable. The FAA believes that the landmarks chosen to delineate the Phoenix TCA boundaries are sufficiently prominent and, therefore, easily identifiable. As noted previously, TCA boundaries based on a circular configuration would not necessarily be aligned with prominent terrain features easily discernable from the air, thus presenting pilots not locally based with a situation similar to that where streets are used to delineate the boundaries. Adequate ground references exist in the Phoenix area to enable pilots to navigate around the TCA if desired. Additionally, the Salt River VORTAC located approximately six miles east of the Phoenix Sky Harbor Airport serves as a navigational aid for pilots desiring to circumnavigate the TCA. Completion of the planned installation of a VOR/DME facility near the Phoenix Sky Harbor International Airport will provide pilots with an additional aid for navigating in the Phoenix area. The remainder of ALPA's concerns have been addressed in previous paragraphs.

The Arizona Pilots Association (APA) wrote in opposition to the Phoenix TCA design and suggested the following be included in the final TCA design: create VFR special use airspace corridor; install a VORTAC on Phoenix Sky Harbor International Airport field before TCA implementation; eliminate the 20- to 25-mile arcs north and south of the primary airport; eliminate the southern portion of Area C between Guadalupe Road and Chandler Boulevard to accommodate Chandler Municipal Airport; revise Area B to accommodate the ATA of Phoenix-Goodyear Municipal and Glendale Municipal Airports; modify the northwestern boundary to exclude airspace currently under control of Luke AFB; exclude the ATA's of Scottsdale Municipal and Falcon Field Airports; make provisions for Williams AFB aircraft that routinely penetrate TCA airspace; rescind the Luke Corridor; and incorporate user comments.

The only suggestion made by the APA that has not been previously addressed is the statement concerning Williams AFB aircraft. Military aircraft operating in and around the traffic pattern at Williams AFB are contained within the Military Operations Area (MOA) which is excluded from the TCA design. Military aircraft that wish to penetrate the TCA must have prior approval.

The Soaring Society (SSA) of America wrote stating that user forums in developing the Phoenix TCA were positive and productive. The SSA believes that this is reflected in the Phoenix TCA design which contains a variety of AAUC recommendations. The SSA also feels that revisions to the TCA design are necessary in the interest of safety and operational efficiency. Those revisions are; Delete airspace from Areas D and E; use El Mirage Road north of the Gila River as the boundary between TCA segments B and G and between B–1 and G; and delete TCA segments H and I.

The FAA deleted airspace as suggested by the SSA in Areas D and E. The other two suggestions mentioned by the SSA have been previously addressed.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Phoenix Sky Harbor International Airport, AZ. The TCA accommodates current traffic flows and provides a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at Phoenix Sky Harbor International Airport is in

the interest of flight safety and will result in a greater degree of protection for the largest number of air passengers using that terminal area. Phoenix Sky Harbor International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each rulemaking action to ensure that the public is not burdened with rules having costs which outweigh benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Phoenix, AZ.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Phoenix Sky Harbor International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $881,000 (discounted, 15 years) in 1987 dollars. Approximately $471,000 (discounted) or 53 percent of the total estimated costs will be incurred by the FAA primarily for additional equipment. The remaining costs will be incurred by small general aviation (GA) aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the former Phoenix ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 26 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a TCA primary airport, within 10 nautical miles of an ARSA primary airport, or within controlled airspace of other designated airports that will also require Mode C transponders.

Thus, in evaluation, as well as the Mode C rule, assumes that all operators of aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be aircraft without electrical systems or others authorized by ATC. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators affected by this rule will only incur the opportunity cost of capital necessary for them to acquire, install, and maintain Mode C transponders one year earlier than they will be required to do so in accordance with Phase II of the Mode C rule. (Note: Initially, the date of implementation was expected to be June 1989. The regulatory evaluation that was prepared for the NPRM assumed that GA aircraft would incur the opportunity cost of installing the required avionics one and a half years earlier than they would under the Mode C rule (June 1989–December 1990). However, since the publication of the regulatory evaluation for the NPRM, the date of implementation of the final rule was moved back to November 1989. Thus, GA aircraft operators would have to purchase the required avionics one year earlier rather than one and a half years and this evaluation for the final rule has changed accordingly.)

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule would be the reduction in the probability of midair collisions resulting from converting the former ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance System (TCAS). 54 FR 940. January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this TCA rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot, but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft, and especially part 121 aircraft, are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate more efficient separation of aircraft in congested airspace.

As the result of these findings, if the former Phoenix ARSA had remained intact (and the recent Mode C and TCAS rules were not in effect), the Phoenix Terminal Area would be expected to experience approximately 2.7 critical NMAC's annually (or 41 critical NMAC's over the next 15 years). Due to the new TCA, however, this figure could be reduced to approximately 0.9 critical NMAC's annually (or 13 critical NMAC's over the next 15 years). Thus, over the next 15 years, this rule could result in a reduction of approximately 28 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's will never materialize as predicted primarily because of the Mode C rule and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical

miles of a TCA to be equipped with a Mode C Transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in 1989 at Phoenix is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than they otherwise would be expected without this rule. A second safety benefit will be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of mandatory ATC by 20 nautical miles due to the replacement of the Phoenix ARSA with the new TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this TCA rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these potential safety benefits are attributed to the TCAS rule. Thus, the potential safety benefits of this TCA rule and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this TCA rule, Mode C Transponder requirements are expected to ease controller workload per aircraft being controlled because of the reduction in radio communications. It will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the new TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the former Phoenix ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers. If the former Phoenix ARSA had remained intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, are attributed to this TCA final rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $881,000 (discounted, in 1987 dollars). Approximately 47 percent of this total cost estimate will fall on those GA aircraft operators without Mode C Transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $86 to $191 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these cost estimates were derived.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the former ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this TCA rule independent of the Mode C and TCAS rules; however, the FAA believes that the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's will continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Phoenix Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Phoenix, AZ [New]

Primary Airport

Phoenix Sky Harbor International Airport (lat. 33°26'10" N., long. 112°00'32" W.)

Phoenix Sky Harbor International Airport Runway 8R Instrument Landing System (ILS) Localizer Antenna (lat. 33°25'52" N., long. 111°59'11" W.)

Salt River VORTAC (SRP) (lat. 33°25'53" N., long. 111°53'17" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded on the north by a point at lat. 33°30'34" N., long. 112°10'05" W., (intersection of 51st Avenue and Camelback Road) extending east along Camelback Road until a point at lat.33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road), on the east by Pima/Price Road until a point at lat. 33°21'48" N., long. 111°53'34" W., (Pima/Price Road and Guadalupe Road), on the south by Guadalupe Road to a point at lat. 33°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) direct to a point at lat. 33°21'48" N., long. 112°06'27" W., direct to a point at lat. 33°21'46" N., long. 112°10'06" W., on the west by 51st Avenue to the point of beginning.

Area B. That airspace extending upwardfrom 3,000 feet MSL to and including 10,000 feet MSL within an area bounded on the north by a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Litchfield Road and Camelback Road) extending east on Camelback Road to a point at lat. 33°30'34" N., long. 112°10'05" W., (Camelback Road and 51st Avenue), on the east by 51st Avenue to a point at lat. 33°21'46" N., long. 112°10'06" W., east to a point at lat. 33°21'48" N., long. 112°06'27" W., south to a point at lat. 33°18'18" N., long. 112°06'27" W., on the south by an extension of Chandler Boulevard extending west to a point at lat. 33°18'18" N., long. 112°21'26" W., on the west by Litchfield Road and an extension of Litchfield Road to the point of beginning, excluding that airspace west of the Gila River.

Area B-1. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point beginning at the intersection of the Gila River and an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00" W., extending west on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°21'26" W., extending north along an extension of Litchfield Road and Litchfield Road until intercepting the Gila River extending southeast along the Gila River to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL with the airspace bounded on the north by a point at lat. 33°32'18" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) east on Indian Bend Road and an extension of Indian Bend Road until a point at lat. 33°32'20" N., long. 111°47'20" W., (extension of Indian Bend Road intercepts Gilbert Road), on the east by Gilbert Road and an extension of Gilbert Road to a point at lat. 33°18'18" N., long. 111°47'20" W., (extension of Gilbert Road intercepts Chandler Boulevard) on the south by Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°58'18" W. (intersection of Chandler Boulevard and Interstate 10), on the west by Interstate 10 to a point at lat. 33°21'50" N., long. 111°58'05" W., (the intersection of Guadalupe Road and Interstate 10) then east on Guadalupe Road to a point at lat. 33°21'49" N., long. 111°53'34" W., (intersection of Guadalupe road and Pima/Price Road), then north on Pima/Price Road until the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°36'35" N., long. 112°13'35" W., extending east on Thunderbird Road and Cactus Road and an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'20" W.) until intercepting the 20-mile arc from the ILS localizer antenna clockwise to the Williams 1 MOA, AZ, boundary, then south along the Williams 1 MOA boundary until intersecting Riggs Road and an extensionof Riggs Road, extending west on Riggs Road and an extension of Riggs Road to a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road) north on Valley Road to a point at lat. 33°15'20" N., long. 112°10'10" W., (intersection of Valley Road and Gila River) north along Gila River until intercepting an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00" W., extending east on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°06'27" W., north to a point at lat. 33°21'48" N., long. 112°06'27" W., east to a point at lat. 22°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) south on Interstate 10 to a point at lat. 33°18'19" N., long. 111°58'18" W., (intersection of Chandler Boulvard and Interstate 10) east on Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°47'20" W., (intersection of Gilbert Road and Chandler Boulevard) north on Gilbert Road and an extension of Gilbert Roadto a point at lat. 33°32'20" N., long. 111°47'20" W., (intersection of Gilbert Road and Indian Bend Road) west on Indian Bend Road to a point at lat. 33°32'18" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) south on Pima/Price Road to a point at lat. 33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road) west on Camelback Road to a point at lat. 33°30'27" N., long. 112°19'20" W.; to lat. 33°35'34" N., long. 112°13'52" W., to the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°42'10" N., long. 112°13'03" W., clockwise along the 20-mile arc of the ILS localizer antenna until intercepting an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'30" W.), west on an extension of Cactus Road and Cactus Road and Thunderbird Road until a point at lat. 33°36'35" N., long. 112°13'35" W., north to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000

feet MSL within an area bounded by a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road and an Extension of Riggs Road) extending east on an extension of Riggs Road and Riggs Road until intercepting the Williams 1 MOA extending south along the Williams 1 MOA boundary until intercepting the 20-mile arc of the ILS localizer antenna clockwise until intercepting a point at lat. 33°07'30" N., long. 112°06'45" W., on Valley Road, north on Valley Road until the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and Camelback Road, east on Camelback Road to a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Camelback Road and Litchfield Road) south on Litchfield Road to a point at lat. 33°18'18" N., long. 112°21'26" W., (intersection of Litchfield Road and an extension of Chandler Boulevard) west on an extension of Chandler Boulevard to a point on the 25-mile arc of the ILS localizer antenna, clockwise until the point of beginning.

Area H. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°46'35" N., long. 112°16'00" W., clockwise on the 25-mile arc of the ILS localizer antenna to the Williams 1 MOA, west along the Williams 1 MOA until intercepting the 20-mile arc of the ILS localizer antenna counterclockwise to a point at lat. 33°42'10" N., long. 112°13'03" W., extending northwest to the point of beginning, excluding that airspace between Interstate 17 and the 009° radial from the Salt River VORTAC.

Area I. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°05'40" N., long. 111°59'50" W., on the 20-mile arc of the ILS localizer antenna counterclockwise to the Williams 1 MOA south along Williams 1 MOA to the 25-mile arc of the ILS localizer antenna clockwise to a point at lat. 33°00'35" N., long. 111°59'50" W., (power transmission line) north along the power transmission line to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Phoenix Sky Harbor International Airport, AZ [Removed]

Issued in Washington, DC on December 6, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-28880 Filed 12-6-89; 3:42 pm]

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federal register

Monday
December 11, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Special Air Traffic Rules and Airport Traffic Patterns; Revocation of VOR Federal Airway No. 16, Phoenix, AZ; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 93

[Docket No. 26082, Amdt. No. 93-60]

RIN 2120-AC92

Special Air Traffic Rules and Airport Traffic Patterns; Revocation of VOR Federal Airway No. 16, Phoenix, AZ.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This action rescinds a regulation that segregated uncontrolled general aviation aircraft from military turbojet aircraft operating under visual flight rules (VFR) within a segment of airspace west of Phoenix, AZ, south of Luke Air Force Base (AFB), and within the confines of a portion of VOR Federal Airway No. 16 (V-16). The regulation is no longer needed because the number of such aircraft operations has been significantly reduced and aircraft are required to have a transponder with automatic altitude reporting equipment (Mode C transponder) in the airspace within 30 nautical miles of the Sky Harbor International Airport, Phoenix, AZ. This action is coincident with the effective date of the establishment of the Phoenix Terminal Control Area (TCA), AZ.

DATES: Effective date: January 11, 1990. Comments must be received on or before January 11, 1990.

ADDRESSES: Comments may be mailed or delivered in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26082, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Steenson, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this rule is final, interested persons are invited to submit written data, views, or arguments on any portion of the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26082." The post card will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the docket number.

Related Regulatory Actions

On June 21, 1988, the FAA published Amendment No. 91-203, Transponder with Automatic Altitude Reporting Capability Requirements (53 FR 23356). That rule, in part, established requirements for an aircraft to have an operating transponder with automatic altitude reporting equipment when operating within 30 nautical miles of a TCA-primary airport. This airspace is commonly referred to as a "Mode C Veil." Effective January 11, 1990, a TCA is established at Phoenix, AZ, and Phoenix Sky Harbor International Airport is designated as the primary airport within the TCA.

Background

The Air Force Petition

By way of letter dated June 24, 1987, the Chairman, Airspace and Support Management Division, U.S. Air Force, petitioned the FAA to rescind subpart E of part 93, §§ 93.71 through 93.75. In the request, the Chairman stated that the existence of a radar approach control service function at Luke AFB will, at the least, provide a level of safety equal to that provided by the regulations for Luke AFB aircraft operating within the designated airspace. In subsequent correspondence, the petitioner stated that the services provided to Luke AFB aircraft in the designated airspace, such as traffic advisories and vectors around nonparticipating traffic, also provide for the safety of nonparticipating aircraft in the affected airspace, and that the special air traffic rule is no longer needed.

Subpart E, Part 93

Subpart E of part 93 establishes special air traffic rules for operations in the vicinity of Phoenix, AZ and Luke AFB, AZ, and along a 16- by 8-mile segment of V-16 between 13 and 29 miles west of Phoenix, AZ. Certain aircraft operations conducted under VFR must comply with air traffic procedures contained in that rule. These procedures were designed to segregate uncontrolled general aviation aircraft operating along V-16 from military turbojet aircraft operating from/to Luke AFB. Specifically, military turbojet aircraft are restricted to altitudes at or above 2,500 feet mean sea level (MSL) and at or below 5,000 feet MSL. Other aircraft operations are restricted to altitudes at or below 2,000 feet MSL and at and above 5,500 feet MSL. Aircraft operating under instrument flight rules (IFR) are not affected by the regulation.

FAA Analysis of the Need for Subpart E, Part 93

At the time the regulation was established, neither a TCA nor an airport radar service area existed and approximately 1,200 military turbojet aircraft operations were conducted daily to/from Luke AFB which crossed V-16 within the designated airspace. All of these operations were conducted under VFR. Today, such operations are primarily conducted under IFR, with VFR operations limited to approximately 70 per day.

Other safety improvements have transpired since the rule was established. The amount of airspace under surveillance by air traffic control (ATC) radar systems has increased. Luke AFB now manages its own approach control function which previously was managed by the ATC facility at Sky Harbor Airport. This responsibility allows controllers at Luke AFB more time to provide traffic advisory service to participating aircraft concerning uncontrolled traffic operating in the designated airspace. Additionally, the aircraft at Luke AFB that would have been most affected by the regulation are F-15 or F-16 aircraft that have sophisticated airborne radar systems. Such radar systems are capable of not only detecting the range and distance of an aircraft posing a potential collision but also the altitude. Thus, an F-15 or F-16 pilot is better able to avoid a collision. Further, these aircraft have extremely high performance characteristics and, in the case of departing aircraft, can quickly

reach altitudes above those at which general aviation aircraft operate.

With the implementation of the Phoenix TCA, it is now a requirement for most aircraft operating within 30 nautical miles of Sky Harbor International Airport to be equipped with a Mode C transponder. Therefore, radar displays at ATC facilities having jurisdiction over the designated airspace will depict the altitudes of detected uncontrolled aircraft. With this altitude information, controllers are better able to assist pilots in avoiding uncontrolled aircraft.

Based on the foregoing discussion, the FAA has determined that the special air traffic procedures contained in subpart E of part 93 are no longer necessary and the general see-and-avoid requirement of part 91 is sufficient to maintain the appropriate level of safety in the affected airspace. Accordingly, the FAA is rescinding subpart E to coincide with the effective date of the establishment of the Phoenix TCA and to avoid a period in which both the subpart E and TCA requirements would apply.

Reasons for No Notice and Immediate Adoption

While the proposal to establish a TCA at Phoenix did not specifically propose to revoke the special air traffic rules contained in part 93, subpart E, the notice did request comments generally on the subject of air traffic rules and procedures in the Phoenix area. Sixteen commenters specifically referred to the subpart E special procedure. Most of the commenters advocated the rescission of subpart E since it would no longer be needed with the establishment of the TCA. Additionally, some commenters questioned whether the FAA had considered the effect the rule would have on operations under the proposed TCA, with the implication that rescission of the rule would eliminate any potential conflict with the new TCA procedures. The FAA agrees and believes that an element of confusion for pilots would be created by the coexistence of the V–16 special procedures area, the Phoenix TCA, and the Mode C Veil.

The FAA is convinced that the issues associated with this action were considered by the public during the comment period associated with the Phoenix TCA proposal, and the majority of comments addressing the special air traffic procedures contained in part 93, subpart E specifically support this action. Therefore, in consideration of the need to avoid any confusion on the part of pilots operating within that portion of V–16 airspace which is contained within the newly established Mode C Veil for the Phoenix TCA, the FAA finds it necessary to revoke part 93, subpart E coincident with the effective date of the Phoenix TCA. In order to promote the fullest opportunity for public discussion of this action, however, the FAA is requesting comments on the final rule to be used in any consideration of future changes to the rule. Comments on the rule must be received by January 11, 1990. Comments may be sent to the address listed under "ADDRESSES."

Economic Evaluation Summary

The FAA has reviewed the revocation of the special air traffic airspace and procedures contained in subpart E of part 93 in conjunction with the establishment of the Phoenix TCA to determine what, if any, economic impact the revocation would have on the users of the affected airspace. The FAA has determined that no significant economic impact will result from such action because aircraft will still be able to use airspace without having to alter their altitudes to comply with the altitude restrictions of the regulation.

The designated airspace is situated in the vicinity of the Phoenix TCA airspace and is substantially within the Mode C Veil of that TCA. Aircraft operating within the veil are required to be equipped with a Mode C transponder. This equipment provides the necessary information to controllers concerning each aircraft's position and altitude.

Controllers use this information in issuing advisories to pilots of aircraft under their jurisdiction to enable them to avoid such detected aircraft.

The portion of the designated airspace which is not included in the Mode C Veil is rarely used by Luke AFB or general aviation aircraft. The majority of Luke AFB aircraft operate under IFR and are unaffected by the part 93 regulation. Therefore, even without the establishment of the Phoenix TCA with its Mode C Veil, the FAA believes that the regulations would no longer be required.

To the extent that the part 93, subpart E procedures differ from the procedures which pilots will use in the affected airspace, the cost of operating within this airspace will be essentially the same under either procedure. Accordingly, the economic impact on aviation users will be minimal, and further regulatory evaluation is not warranted.

International Trade Impact Analysis

The revocation of special air traffic airspace and procedures in subpart E of part 93 in conjunction with the establishment of the Phoenix TCA will not impose any new regulation or additional cost on the affected operators. Thus, it will not have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on large number of small business entities. As noted above, the revocation of special air traffic airspace and procedures in subpart E of part 93, in conjunction with the establishment of the Phoenix TCA, will not have any economic impact on the affected operators. Therefore, it is certified that, under the criteria of the RFA, a regulatory flexibility analysis is not required.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (Air), Penalties, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Subpart E—[Removed]

2. Subpart E, consisting of §§ 93.71 through 93.75, is removed.

Issued in Washington, DC, on December 6, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-28881 Filed 12-8-89; 3:42 pm]

BILLING CODE 4910-13-M

federal register

Monday
December 11, 1989

Part IX

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1990; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1990; Solicitation of Applicants

Applications are invited for competitive grant awards under the Special Research Grants Program for fiscal year 1990.

The authority for this program is contained in section 2(c)(1) of the Act of August 4, 1965, Public Law 89–106, as amended (7 U.S.C. 450i(c)(1)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the programs discussed below. Proposals may be submitted by any land-grant college or university, research foundation established by a land-grant college or university, State agricultural experiment station, and any college or university having a demonstrable capacity in food and agricultural research. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; and (c) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of (1) animal health research and (2) aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program areas and guidelines are thus provided as a base from which proposals may be developed:

Program Area

1.0 Animal Health Research

CSRS Contacts: Dr. Dyarl D. King; Telephone: (202) 447–5007.

Funds will be awarded to support research seeking solutions to health problems of livestock and poultry and major agriculture species. Up to $150,000 will be awarded for the support of any one project under this program area, except in Aquaculture where the limit on a single award will be up to $80,000. A proposal will not be evaluated by more than one peer panel in the Animal Health program area.

Investigators and co-investigators who have received Special Research Grant awards in the Animal Health area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

The overall objective of this research is to develop and/or refine methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry and major agriculture species.

Research should be directed toward: (1) Basic studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on animal health; and (2) development of practical, implementable health management systems for the producer to prevent or alleviate these significant causes of animal losses. Interdisciplinary research is encouraged on predisposing factors to animal disease including the effects of production environment. Studies to more clearly define the condition of the well-being of animals used in agricultural research is encouraged. Other studies to define the needs for proper animal care in Animal Health Research and Teaching will receive consideration for funding, especially in the Swine and Poultry areas. Research may include clarification of complex or unknown etiologies including nutritional, physiological, genetic, and environmental interactions; development of improved methods of detecting disease agents or antibodies in animals, animal products, tissues, etc.; clarification of disease pathogenesis; determination of methods of disease transmission including transmission by embryo transfer, artificial insemination and importation of animal products (such studies should mimic as closely as possible the conditions in practice of collection, preparation and use of embryos, semen or such products); development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances (such alternatives may include biologic methods, sterile male techiques, artificial pheromones, etc.); development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

Emphasis on enteric diseases of Beef and Dairy Cattle, Swine, Chickens and Turkeys will receive special consideration, especially proposals which offer solutions to the *Salmonella enteritidis* and other Salmonella problems facing these industries.

The specific commodity areas, and their subcategories (not prioritized), in which projects will be funded are listed below. The commodity areas will be funded in the approximate percentages shown. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

1.1 Beef Cattle (Approximately 41 Percent of Available Funds)

(1) Respiratory diseases.
(2) Reproductive diseases.
(3) Digestive and enteric diseases (including Salmonellosis).
(4) Parasitic diseases.
(5) Metabolic diseases.

1.2 Dairy Cattle (Approximately 18 Percent of Available Funds)

(1) Mastitis.
(2) Reproductive diseases.
(3) Respiratory diseases.
(4) Digestive and enteric diseases (including Salmonellosis).
(5) Metabolic diseases.

1.3 Swine (Approximately 18 Percent of Available Funds)

(1) Enteric diseases (including Salmonellosis).
(2) Respiratory diseases.
(3) Reproductive diseases.
(4) Metabolic and musculoskeletal diseases.
(5) Parasitic diseases.

1.4 Poultry (Approximately 13 Percent of Available Funds)

(1) Respiratory diseases.
(2) Metabolic and immunologic diseases.

(3) Enteric diseases (Special emphasis on *Salmonella enteritidis* in Turkeys and Chickens).
(4) Skeletal diseases.

1.5 Sheep and Goats (Approximately 5 Percent of Available Funds)

(1) Musculoskeletal diseases.
(2) Respiratory diseases.
(3) Digestive and enteric diseases.
(4) Internal parasitic diseases.

1.6 Horses (Approximately 3 Percent of Available Funds)

(1) Respiratory diseases.
(2) Digestive and enteric diseases.
(3) Reproductive diseases.
(4) Musculoskeletal diseases.
(5) Parasitic diseases.

1.7 Aquaculture (Approximately 2 Percent of Available Funds)

(1) Infectious diseases.
(2) Parasitic diseases.

Program Area

2.0 Aquaculture Research

2.1 Integrated Aquatic Animal Health Management

2.2 Genetic Improvement

CSRS Contacts: Dr. Meryl Broussard; Telephone: (202) 447–7061.

No more than $80,000 will be awarded for support of any one project under this program area. The objective of this research area is to enhance the knowledge and technology base necessary for the continued growth of the domestic aquaculture industry as a form of production agriculture. Emphasis is placed on research leading to improved production efficiency and increased competitiveness of private sector aquaculture in the United States.

Because of the limited funds for this program area, only proposals focused on commercially important aquaculture species in the following specific subareas of inquiry will be considered:

2.1 Integrated Aquatic Animal Health Management

Priority will be given to studies aimed at reducing acute and chronic losses related to aquatic animal health in aquaculture production systems through an integrated holistic approach including studies in the following areas; physiological stress related to the quality of the aquatic production system; genetic, environmental and nutritional components of aquatic health management.

2.2 Genetic Improvement

Priority will be given to studies aimed at improving production efficiency through genetic improvement of aquacultural stocks including: Genetic mechanisms and methods to control sex determination; genetic basis for inheritance of commercially important traits such as growth, cold tolerance and pathogen susceptibility; identification of major genes affecting performance; application of biotechnology and the integration of this technology into breeding programs; basic gene structure and expression in aquatic species; performance evaluation of aquacultural stocks and utilization of crossbreeding and hybridization.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Unit, Grants Administative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S Department of Agriculture, Suite 303, Aerospace Building, Washington, DC 20250–2200, Telephone: (202) 475–5048.

What to submit

An original and nine copies of each proposal are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.) It should be noted that the September 1989 version of the Grant Application Kit must be used, as previous versions are obsolete.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior Animal Health Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Special Research Grants Program, 7 CFR part 3400, as amended.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Animal Health and Aquaculture Special Research Grants program areas. Duplicate proposals will be returned without review.

Where and When to Submit Grant Applications

Each research grant application must be submitted by the date set forth below to:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Suite 303, Aerospace Building, Washington, DC 20250–2200.

Please Note: Hand delivered proposals should be brought to: Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20024

To be considered for funding during fiscal year 1990, proposals must be postmarked by February 26, 1990, for both the Animal Health Research and the Aquaculture Research Program areas.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Instructions

On Form CSRS–661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and the applicable program area and commodity area should be indicated in Block 8. Select one program area only. The number assigned to the commodity area must also be cited in Block 8. Example: (Animal Health, 1.5 Sheep and Goats). The final determination of the program area and commodity area will be made by agency staff members and/or the appropriate peer review panel. The code

numbers assigned to commodity areas and specific areas of inquiry are listed below:

1.0 *Animal Health Research (use appropriate commodity area 1.1 through 1.7)*
1.1 *Beef Cattle*
1.2 *Dairy Cattle*
1.3 *Swine*
1.4 *Poultry*
1.5 *Sheep and Goats*
1.6 *Horses*
1.7 *Aquaculture*
2.0 *Aquaculture Research* (Use appropriate subarea 2.1 or 2.2)
2.1 *Integrated Aquatic Animal Health Management*
2.2 *Genetic Improvement*

Supplementary Informaion

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0525–0022.

The award of any grants under the Special Research Grants Program during FY 1990 is subject to the availability of funds.

Done at Washington, DC, this 6th day of December 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89–28887 Filed 12–8–89; 8:45 am]

BILLING CODE 3410–22–M

federal register

Monday
December 11, 1989

Part X

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1990; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Rangeland Research Grants Program for Fiscal Year 1990; Solicitation of Applications

Notice is hereby given that under the authority contained in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The award of any grants under the Rangeland Research Grants Program during FY 1990 is subject to the availability of funds.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR part 3401 (51 FR 16152, April 30, 1986), in which reference is made to 7 CFR part 3400; it should be noted, however, that the amendments to 7 CFR 3400 (53 FR 49640, December 8, 1988) do not apply to the Fiscal Year 1990 Rangeland Research Grants Program. The provisions in 7 CFR part 3401 set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, apply to this program.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200. Telephone: (202) 475–5048.

What to Submit

An original and nine copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.)

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the regulations contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application must be submitted to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200.

To be considered for funding during fiscal year 1990, proposals must be received in the Proposal Services Unit by close of business on Monday, February 5, 1990. One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1990

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS–USDA; telephone (202) 447–3089.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 6th day of December 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc 89-28886 Filed 12-8-89; 8:45 am]

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federal register

Monday
December 11, 1989

Part XI

Department of Commerce

Request for Comments on the Proposed Guidelines for Considering Whether or Not a Statistical Adjustment for the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population; Notice

DEPARTMENT OF COMMERCE

[Docket No. 91282-9282]

Request for Comments on the Proposed Guidelines for Considering Whether or not a Statistical Adjustment of the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice and request for comments.

SUMMARY: These proposed guidelines and this notice are pursuant to the Stipulation and Order agreed to by the Federal Government and the City of New York and others in the case of *City of New York et al.*, v. *Department of Commerce, et al.*, Docket No. 88 Civ. 3474 (U.S. Dist. Ct., EDNY). The purpose of this notice is to inform the public about these proposed guidelines and seeks comments on them from the widest possible audience.

DATES: Comments from the public should be received no later than January 25, 1990.

ADDRESS: Written comments should be addressed to: Michael R. Darby, Under Secretary for Economic Affairs, Room 4848 Herbert C. Hoover Building, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mark W. Plant, Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce, telephone (202) 377-3523.

SUPPLEMENTARY INFORMATION: Paragraph 4 of the Stipulation and Order referred to above in the SUMMARY provides that "* * * the Department will promptly develop and adopt guidelines articulating what defendants (Department of Commerce) believe are the relevant technical and nontechnical statistical and policy grounds for decision on whether to adjust the 1990 Decennial Census population counts."

The paragraph goes on to state that the Department's proposed guidelines shall be published in the **Federal Register** by December 10, 1989, with a request for comments, and then published in final form in the **Federal Register** by March 10, 1990.

Paragraph 5 of the Stipulation and Order states that the "Defendants (Department of Commerce) shall determine whether an adjustment satisfies the guidelines specified in para. 4 hereof (above). If the Secretary determines to make an adjustment, defendants (Department of Commerce) shall publish corrected 1990 Decennial Census population data at the earliest practicable date and in all events, not later than July 15, 1991."

Paragraph 5 of the Stipulation and Order goes on to state that "If the Secretary determines not to make an adjustment, defendants (Department of Commerce) shall publish at the earliest practicable date and, in all events, not later than July 15, 1991, a detailed statement of its grounds, including a detailed statement of which guidelines in paragraph 4 above were not met and in what respects such guidelines were not met."

Request for Comments

The Department of Commerce invites the public to comment on these proposed guidelines within 45 days of this notice. Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street and Constitution Avenue, Washington, DC 20230.

Dated: December 7, 1989.

Michael R. Darby,

Under Secretary for Economic Affairs.

Guidelines

Each of the following guidelines is accompanied by a brief explanation or example of its intent. Following that explanation a brief description of the empirical information directly bearing upon it is presented. The Census Bureau will implement the necessary technical operations to gather and evaluate this empirical information. The Bureau will use the highest level of professional judgment in implementing and evaluating these operations.

[1] The Census shall be considered the best count of the population of the United States unless an adjusted count is shown to be more accurate, within acceptable margins of statistical error, at the national, state, local, and census block levels.

Explanation: The constitutional mandate of the Census Bureau is to enumerate the population, and the investment it makes in decennial census operations is to assure that the count is the best count of the population achievable given current methodology. The census is a standard. Other data collection activities are compared to census results to assess their quality. In the past, no sample survey has had as complete coverage as the decennial census, and no coverage measurement survey has produced data of better quality than the census. Strengths and weaknesses of the census are well known and extensively documented. The census is understood and because of its quality has wide acceptance and extensive use among policy makers and other users. Before replacing the census, we must be sure that the replacement is an improvement. The assumption that any effort involving less than an attempt to enumerate the entire population can lead to a more accurate enumeration calls into question the process the Census Bureau has developed over the past two hundred years. The enumeration is based on evidence that physical persons are in a particular location or block at a particular time. A set of adjusted counts would be based on a statistical inference that unaccounted for persons were present and that persons who were actually enumerated do not exist or were counted twice. Both determinations are based on a survey of a sample of similar blocks from locations across the country. To reiterate, there is no reason to adjust the census unless the adjusted count is shown to be better for all the uses to which census counts are put. Thus, the evidence to be acceptable must show overwhelmingly that the count can be improved by statistical adjustment in order to overturn the premise that the actual enumeration is the best count possible.

Comparison of estimates of population size. The estimates of the size of the population from the original

enumeration, the demographic analysis, and the post-enumeration-survey estimates will be compared to assess their consistency. The comparison will take into consideration the uncertainty inherent in the demographic analysis and post-enumeration-survey estimates. The original enumerations will be considered to be more accurate for all geographic areas unless contrary evidence is presented.

[1A] The post-enumeration survey is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: The post-enumeration survey can provide an estimate of the total count of the population, based on techniques of survey sampling. It does not provide a substitute for that complete count. Its proper use is as an adjunct to the population count which provides an estimate of its completeness, within statistical limits of error. Thus, any adjustment of the population count, using post-enumeration-survey information, must be based on the enumeration.

[1B] Demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: Although demographic analysis can provide an alternative estimate of national population counts, it cannot be used to provide data at the subnational levels required by the various uses to which census data are put. Demographic analysis is an estimate of the population principally based on administrative data sources. Although it could be considered a derived count of the population, it remains an alternative to the direct enumeration of the population, not a substitute for it. Thus any adjustment of the population using demographic analysis information must only be a supplement to the enumeration.

[1C] Any combination of the post-enumeration survey and demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: This guideline affirms that any combination of the techniques referred to in the prior two guidelines remains an inadequate surrogate for the actual enumeration of the population.

[2] The size of any undercount or overcount inferred from demographic analyses of population sub-groups shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis shall be clearly presented.

Explanation: Estimates of the size of certain cohorts of the population are based on assumptions about or studies of the behavior of these population cohorts, rather than on administrative or other records. For some cohorts these assumptions alone have led to conclusions of undercounts or overcounts in several different censuses. The extent to which such conclusions result from specific assumptions must be expressly articulated. Moreover, the extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluation of demographic analysis estimates. Demographic analysis of population estimates is susceptible to a variety of sources of error.

Numerous techniques will be used to evaluate the quality of the demographic analysis estimates. Among the potential sources of error in the demographic analysis are:

Birth registration completeness.

Net immigration of undocumented aliens.

White births, 1915–1935.

Black births, 1915–1935.

Foreign-born emigrants.

Population over age 65.

Models to translate historical birth-record racial classifications into 1990 self-reported census concepts.

The final analysis will discuss how these and other components cumulate into overall levels of error.

[3] The sources of any undercount or overcount of population subgroups inferred from the analysis of the post-enumeration survey conducted subsequent to the 1990 census shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis or the methods inherent in the analysis shall be clearly presented.

Explanation: The capture-recapture method which lies at the heart of the post-enumeration-survey models for estimating population coverage deficiencies is not, as used in the decennial census, completely analogous to more conventional uses of the method in estimating populations of, say, fish or land-based fauna in a natural setting. Thus, it is imperative that the influence of this methodology on the undercount or overcount estimates be clearly explained. Moreover, the post-enumeration-survey adjustment mechanism relies on numerous assumptions. The extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluations for post-enumeration-survey estimates. Numerous techniques will be used to evaluate the quality of the post-enumeration-survey estimates. Among the possible sources of error for the dual system estimate of population size based on the post-enumeration survey and the census are:

Missing data.

Quality of the reported census day address.

Fabrication in the P sample.

Matching error.

Measurement of erroneous enumerations.

Balancing the estimates of gross overcount and gross undercount.

Correlation bias.

Variance

An analysis of how these and other component errors combine to produce an overall level of error will be discussed. Implicit in all evaluations is that all analyses examine data for the population as a whole and within race, sex, Hispanic origin, and geographical detail.

[4] The 1990 Census may be adjusted only if the adjusted counts are consistent and complete across all jurisdictional levels: national, state, local, and census block. Thus, for example, counts could not be adjusted at the state level and left unadjusted at the census block level. If any census block within a stratum is adjusted, then all census blocks within that same stratum must be adjusted. Any adjusted count must be arithmetically consistent across all levels of geography and with respect to age, race, Hispanic origin, and sex. This requirement does not apply when incorporating counts of military overseas into national totals for reapportionment purposes.

Explanation: If any adjusted count is to be used, it must be adjusted at every level at which census counts are used. Some strata, for which there is no conclusive evidence of an undercount, may not be adjusted. It must be arithmetically consistent to avoid unnecessary confusion and to avoid any efforts to choose among alternative sets of numbers to suit a particular purpose. It is unacceptable to conclude, for example, that one set of numbers at the level of individual states can be used for redistricting purposes, while another set could be used for apportionment purposes.

Evaluations of small area estimation. A synthetic estimation procedure might be used for adjustment. A synthetic adjustment assumes that the probability

of being missed by the census is constant for each person within an age, race, Hispanic origin, and sex category in a geographical area. A synthetic adjustment is performed in two steps. First, the preferred adjustment factors are estimated for each age, race, Hispanic origin, and sex category for a post-enumeration-survey stratum. The same age, race, Hispanic origin, and sex categories may not be appropriate for every post-enumeration-survey stratum, in which case the categories will be combined as necessary. Then the adjusted estimate in each category for the census block is obtained by multiplying the unadjusted census estimate in that category by the adjustment factor. The adjusted census estimate for the census block is computed by adding the estimated adjustments for the age, race, Hispanic origin, and sex categories. Put simply, under adjustment each individual enumerated would receive a different relative weight in the adjusted population count according to his or her race, age, sex, ethnic background, and place of residence.

The coverage error may vary substantially within the post-enumeration-survey stratum, although the strata were drawn so as to be homogeneous with respect to expected coverage error. The goal of this analysis is to determine whether or not the assumptions underlying a synthetic adjustment of the census are valid and produce counts which are more accurate at all geographic levels at which census data are used.

[5] The 1990 Census may be adjusted only if statistical models of the adjustment process of comparable reliability lead to essentially similar conclusions or if a particular model is shown unequivocally to provide the best estimate. Ultimately, one statistical model must be chosen if adjustment is to be undertaken. It must be clear that this unique model yields the most accurate counts and that its selection should be based on the available information about relative accuracy of competing methods.

Explanation: This guideline is intended to deal with the ambiguous outcomes resulting from the application of different statistical models to the Census, post-enumeration survey, and the demographic analysis. It acknowledges that individual judgment cannot be eliminated entirely from the reasoning leading to a conclusion related to the application of an adjustment. It would suggest, for example, that if all statistical models led to consistent statistical results that are all significant in one direction, the decision on adjustment would depend on the direction and the strength of the conclusions based on those results. If any one model were to be overwhelming in its accuracy, the results from this model could be accepted. In the latter instance, this guideline would require the strongest possible factual evidence to support such a conclusion. Whatever the case, however, statistical adjustment must ultimately use only one model that is shown to yield the most accurate counts.

Comparison of evaluations of the original enumeration. The demographic analysis and the post-enumeration-survey estimates provide evaluations of the original enumeration. The census coverage error rates from the demographic analysis and the post-enumeration-survey will be compared to assess the consistency of the evaluations.

[6] The 1990 Census may be adjusted only if the general rationale for the adjustment can be clearly and simply stated in a way that is understandable to the general public.

Explanation: The decennial Census is a public ceremony in which all usual residents of the United States are required to participate. If, for the first time in the history of the Census the count were statistically adjusted, and the adjustment was done in a way that is percevied to be out of the ordinary, the rationale for that action must be clearly and simply stated and understandable to the general public.

Documentation and reproducibility. The methods, assumptions, computer programs, and data used to prepare population estimates and adjustment factors will be fully documented. The documentation will be sufficiently complete for outside reviewers to reproduce the estimates. These standards apply to the post-enumeration-survey estimates, the demographic analysis estimates, and the small area estimates.

[7] The 1990 Census may be adjusted only if the resulting counts are of sufficient quality and level of detail to be usable for Congressional and legislative reapportionment, redistricting, and for all other purposes and at all levels, for which the Census Bureau publishes decennial Census data.

Explanation: The guideline recognizes that the population counts must be usable for all purposes for which the Census Bureau publishes data. Thus, the level of detail must be adequate to produce counts for all such purposes. The guideline also reinforces the fact that there can be, for the population at any one point in time, only *one* set of official government population figures. The guideline does not speak in any way to the issue of the timing of the release of adjusted figures, nor is it meant to preclude any adjustment solely on the basis of timing.

Evaluations of small area estimation. See the discussion under guideline [4], above.

[8] The 1990 Census may be adjusted only if the adjustment is fair and reasonable, and is not excessively disruptive to the orderly transfer of political representation.

Explanation: Any adjustment of the 1990 census should be fair and reasonable in its impact on the political process and on any allocation of economic resources that is based on the decennial population counts. This guideline is intended to ensure that the factor of disruption is explicitly taken into account as the decision whether or not to adjust the 1990 census is reached. It requires an explicit statement of the degree to which adjustment would be disruptive of the orderly transfer of political representation. It is not sufficient to simply state that disruption would or would not occur. Based on the empirical evidence and the recommended courses of action, the extent of disruption must be weighed against any benefits that might accrue from adjustment.

[9] The 1990 Census may be adjusted even though the differential overcount or undercount compares favorably with the results of the differential overcount and undercount in the 1980 census only if there are compelling statistical and policy reasons to do so.

Explanation: This guideline requires an examination of the results of the analysis of the adequacy of the 1990 count in terms of its comparison with the 1980 count. One fact of history is that, although there was an acknowledged undercount and overcount of population subgroups and of the entire population in 1980, the quality of the estimates of those deficiencies was not adequate to allow an adjustment of those figures. Should coverage deficiencies be no greater than they were in 1980, substantial documentation of the advantages of an adjustment in increasing the utility and accuracy of the Census count would be required to warrant a decision to adjust.

[10] Any decision whether or not to adjust the 1990 census must take into account the effects such a decision might have on future census efforts.

Explanation: The decennial census is an integral part of our democratic process. Participation in the Census

must not be discouraged. Respect for the objectivity, accuracy, and confidentiality of the census process must be maintained. If an adjustment were to erode public confidence in the census or call into question the necessity of the population participating in future censuses, then that would weigh against adjustment. The extent to which adjustment or non-adjustment would be perceived as a politically motivated act, and thus would undermine the integrity of the census, should also be weighed in making any adjustment decisions.

[11] Any adjustment of the 1990 Census may not violate the United States Constitution or Federal statutes.

This guideline requires no explanation.

[12]There will be a determination whether or not to adjust the 1990 census only when sufficient data are available and analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust.

Explanation: It is inappropriate to decide to adjust without sufficient data and analysis. The Bureau will make every effort to endure such data are available and analysis is complete in time for the Secretary to decide and publish adjusted data by July 15, 1991. If however, sufficient data and analysis of the data are not available in time, a determination will be made not to adjust.

[FR Doc. 89–29003 Filed 12–7–89; 3:08 p.m.]

BILLING CODE 3510–EA–M

federal register

Monday
December 11, 1989

Part XII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Claims Payment Cycle; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-90-N]

Medicare Program; Claims Payment Cycle

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the retention of a payment floor requirement for Medicare claims paid by intermediaries and carriers, acting on behalf of HFCA, for services provided to Medicare beneficiaries. Under the payment floor, claims and bills may not be paid until the 15th day after receipt. The 14-day retention requirement was originally provided for by section 4031 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203. We also announce a temporary waiver of the payment floor requirement for claims and bills submitted prior to October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald Gwyn, 301–966–6963.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Act, public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of Medicare beneficiaries under standards specified in their agreements.

Under section 1842 of the Act, the Secretary is authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies and then make payment to the appropriate party in accordance with contract standards.

B. Purpose of Notice

Section 4031 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended sections 1816 and 1842 of the Social Security Act, which govern the standards for agreements and cotracts with intermediaries and carriers. Section 4031 added new sections 1816(c)(3) and 1842(c)(3) to the Social Security Act to provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted within an applicable period of time after which the claim is received. Under this provision, for the period July 1, 1988 through September 30, 1988, claims had to be held for 10 days before payment was made. For the period of October 1, 1988 through September 30, 1989, claims had to be held for 14 days before payment could be made. This claims processing standard has led to consistent and uniform contractor claims processing operations. We also have found that use of such a standard allows for a predictable cash flow to entities submitting claims for payment. Therefore, we are announcing through this notice that intermediaries and carriers are being directed to continue to use the 14-day payment floor as the applicable period for processing claims, except as provided below.

C. Exception for Fiscal Year 1990

As stated above, we believe that the retention of the 14-day payment floor requirement provides for uniform administration and financial accountability of the program. Recently, both the House of Representatives and the Senate have passed legislation to repeal the Medicare Catastrophic Coverage Act of 1988 (see Congressional Record, November 21, 1989). Our budget for the current fiscal year includes an amount for claims that may be higher than necessary due to expected reduction in claims following the repeal of certain coverages. When this legislation is signed by the President, we intend to make this funding available for faster processing and payment of claims in fiscal year 1990. As a result we are issuing a general instruction to intermediaries and carriers to waive the 14-day payment floor requirement for the balance of fiscal year 1990. All claims received from the date of publication of this notice through September 30, 1990 will be processed and paid as soon as possible without regard to the 14-day payment floor requirement.

Secs. 1816(c) and 1842(c) of the Social Security Act (42 U.S.C. 1395h(c) and 1395u(c)).

Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and Program No. 13.774, Medicare—Supplementary Medical Insurance.

Dated: December 8, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–29085 Filed 12–8–89; 12:09 pm]

BILLING CODE 4120–01–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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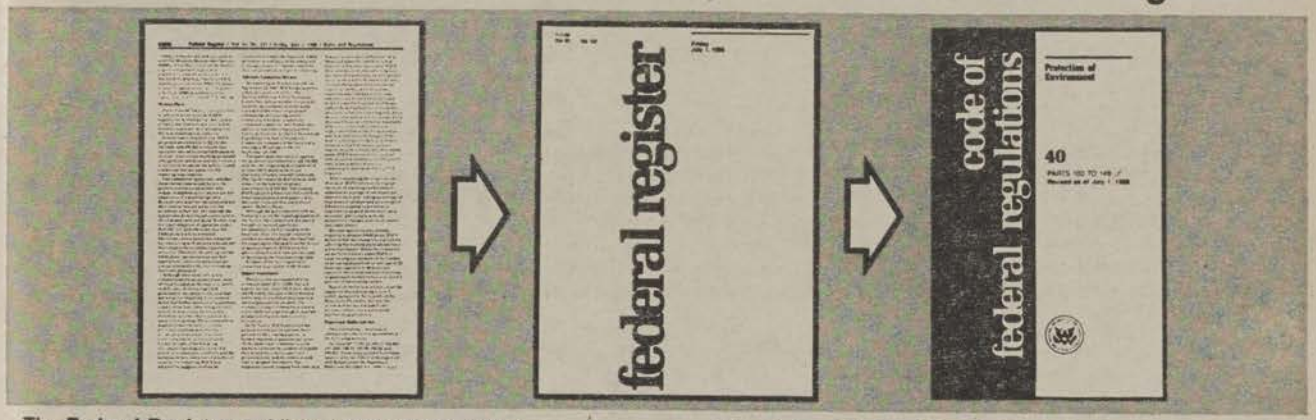

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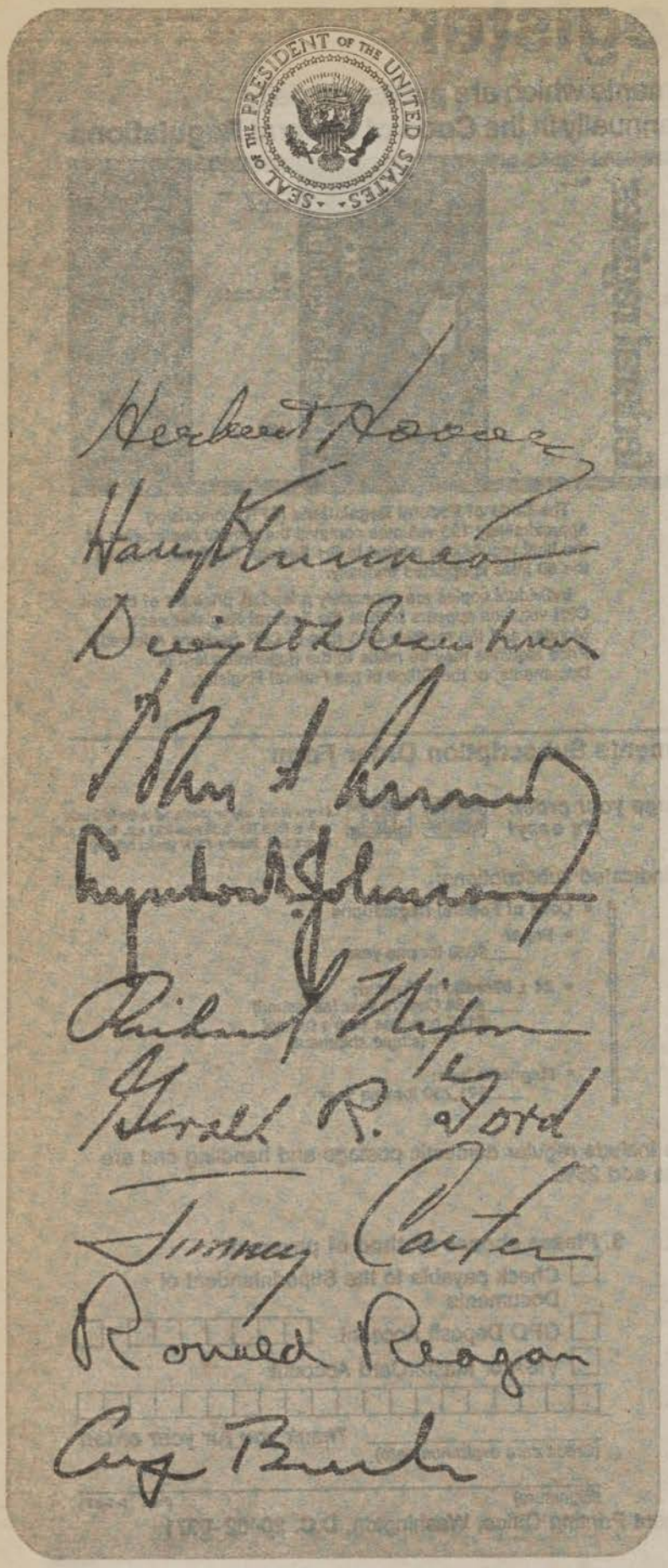

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